

## AGRICULTURAL GUESTWORKER ACT

DECEMBER 12, 2014.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,  
submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 1773]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1773) to create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as—

- (1) the “Agricultural Guestworker Act”; or
- (2) the “AG Act”.

### SEC. 2. H-2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM.

(a) IN GENERAL.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking “; or (iii)” and inserting “, or (c) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services; or (iii)”.

(b) DEFINITION.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(53) The term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities.”.

### SEC. 3. ADMISSION OF TEMPORARY H-2C WORKERS.

(a) PROCEDURE FOR ADMISSION.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

#### “SEC. 218A. ADMISSION OF TEMPORARY H-2C WORKERS.

“(a) DEFINITIONS.—In this section and section 218B:

“(1) AREA OF EMPLOYMENT.—The term ‘area of employment’ means the area within normal commuting distance of the worksite or physical location where the work of the H-2C worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.

“(2) DISPLACE.—The term ‘displace’ means to lay off a worker from a job that is essentially equivalent to the job for which an H-2C worker is sought. A job shall not be considered to be ‘essentially equivalent’ to another job unless the job—

“(A) involves essentially the same responsibilities as such other job;

“(B) was held by a United States worker with substantially equivalent qualifications and experience; and

“(C) is located in the same area of employment as the other job.

“(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment of the individual.

“(4) EMPLOYER.—The term ‘employer’ means an employer who hires workers to perform agricultural employment.

“(5) H-2C WORKER.—The term ‘H-2C worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

“(6) LAY OFF.—

“(A) IN GENERAL.—The term ‘lay off’—

“(i) means to cause a worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) of subsection (b)); and

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (b)(7), with either employer described in such subsection) at equivalent or higher compensa-

tion and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(7) PREVAILING WAGE.—The term ‘prevailing wage’ means the wage rate paid to workers in the same occupation in the area of employment as computed pursuant to section 212(p).

“(8) UNITED STATES WORKER.—The term ‘United States worker’ means any worker who is—

“(A) a citizen or national of the United States; or

“(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

“(b) PETITION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H-2C worker shall file with the Secretary of Agriculture a petition attesting to the following:

“(1) TEMPORARY WORK OR SERVICES.—

“(A) IN GENERAL.—The employer is seeking to employ a specific number of agricultural workers on a temporary basis and will provide compensation to such workers at a specified wage rate.

“(B) DEFINITION.—For purposes of this paragraph, a worker is employed on a temporary basis if the employer intends to employ the worker for no longer than 18 months (except for shepherders) during any contract period.

“(2) BENEFITS, WAGES, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (k) to all workers employed in the jobs for which the H-2C worker is sought and to all other temporary workers in the same occupation at the place of employment.

“(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment of the H-2C worker and during the 30-day period immediately preceding such period of employment in the occupation at the place of employment for which the employer seeks approval to employ H-2C workers.

“(4) RECRUITMENT.—

“(A) IN GENERAL.—The employer—

“(i) conducted adequate recruitment in the area of intended employment before filing the attestation; and

“(ii) was unsuccessful in locating a qualified United States worker for the job opportunity for which the H-2C worker is sought.

“(B) OTHER REQUIREMENTS.—The recruitment requirement under subparagraph (A) is satisfied if the employer places a local job order with the State workforce agency serving the local area where the work will be performed, except that nothing in this subparagraph shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after receipt using the employment statistics system authorized under section 15 of the Wagner-Peyser Act (29 U.S.C. 491-2). The Secretary of Labor shall include links to the official Web sites of all State workforce agencies on a single webpage of the official Web site of the Department of Labor.

“(C) END OF RECRUITMENT REQUIREMENT.—The requirement to recruit United States workers shall terminate on the first day that work begins for the H-2C worker.

“(5) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job for which the H-2C worker is sought to any eligible United States worker who—

“(A) applies;

“(B) is qualified for the job; and

“(C) will be available at the time and place of need.

This requirement shall not apply to a United States worker who applies for the job on or after the first day that work begins for the H-2C worker.

“(6) PROVISION OF INSURANCE.—If the job for which the H-2C worker is sought is not covered by State workers’ compensation law, the employer will

provide, at no cost to the worker unless State law provides otherwise, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers compensation law for comparable employment.

"(7) REQUIREMENTS FOR PLACEMENT OF H-2C WORKERS WITH OTHER EMPLOYERS.—A nonimmigrant who is admitted into the United States as an H-2C worker may be transferred to another employer that has filed a petition under this subsection and is in compliance with this section.

"(8) STRIKE OR LOCKOUT.—There is not a strike or lockout in the course of a labor dispute which, under regulations promulgated by the Secretary of Agriculture, precludes the hiring of H-2C workers.

"(9) PREVIOUS VIOLATIONS.—The employer has not, during the previous two-year period, employed H-2C workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or non-immigrant workers, as determined by the Secretary of Agriculture after notice and opportunity for a hearing.

"(c) PUBLIC EXAMINATION.—Not later than 1 working day after the date on which a petition under this section is filed, the employer shall make a copy of each such petition available for public examination, at the employer's principal place of business or worksite.

"(d) LIST.—

"(1) IN GENERAL.—The Secretary of Agriculture shall maintain a list of the petitions filed under subsection (b), which shall—

"(A) be sorted by employer; and

"(B) include the number of H-2C workers sought, the wage rate, the period of intended employment, and the date of need for each alien.

"(2) AVAILABILITY.—The Secretary of Agriculture shall make the list available for public examination.

"(e) PETITIONING FOR ADMISSION.—

"(1) CONSIDERATION OF PETITIONS.—For petitions filed and considered under subsection (b)—

"(A) the Secretary of Agriculture may not require such petition to be filed more than 28 calendar days before the first date the employer requires the labor or services of the H-2C worker;

"(B) unless the Secretary of Agriculture determines that the petition is incomplete or obviously inaccurate, the Secretary, not later than 10 business days after the date on which such petition was filed, shall either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery; and

"(C) if the Secretary determines that the petition is incomplete or obviously inaccurate, the Secretary shall—

"(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

"(ii) within 10 business days of receipt of the corrected petition, approve or deny the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.

"(2) PETITION AGREEMENTS.—By filing an H-2C petition, a petitioner and each employer consents to allow access to the site where the labor is being performed to the Department of Agriculture and the Department of Homeland Security for the purpose of investigations to determine compliance with H-2C requirements and the immigration laws. Notwithstanding any other provision of law, the Departments of Agriculture and Homeland Security cannot delegate their compliance functions to other agencies or Departments.

"(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition under subsection (b) to hire an alien as a temporary agricultural worker may be filed by an association of agricultural employers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint employer of temporary agricultural workers, such workers may be transferred among its members to perform agricultural services of a temporary nature for which the petition was approved.

"(3) TREATMENT OF VIOLATIONS.—

"(A) INDIVIDUAL MEMBER.—If an individual member of a joint employer association violates any condition for approval with respect to the member's petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(9) and invoke penalties pursuant to subsection (i) against only that member of the association unless the Secretary of Agri-

culture determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

“(B) ASSOCIATION OF AGRICULTURAL EMPLOYERS.—If an association representing agricultural employers as a joint employer violates any condition for approval with respect to the association’s petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(9) and invoke penalties pursuant to subsection (i) against only the association and not any individual member of the association, unless the Secretary determines that the member participated in, had knowledge of, or had reason to know of the violation.

“(g) EXPEDITED ADMINISTRATIVE APPEALS.—The Secretary of Agriculture shall promulgate regulations to provide for an expedited procedure—

“(1) for the review of a denial of a petition under this section by the Secretary; or

“(2) at the petitioner’s request, for a de novo administrative hearing at which new evidence may be introduced.

“(h) MISCELLANEOUS PROVISIONS.—

“(1) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of H–2C workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

“(2) FEES.—

“(A) IN GENERAL.—The Secretary of Agriculture shall require, as a condition of approving the petition, the payment of a fee, in accordance with subparagraph (B), to recover the reasonable cost of processing petitions filed by employers or associations of employers seeking H–2C workers for jobs of a temporary or seasonal nature, but may not require the payment of such fees to recover the costs of processing petitions filed by employers or associations of employers seeking H–2C workers for jobs not of a temporary or seasonal nature.

“(B) FEE BY TYPE OF EMPLOYEE.—

“(i) SINGLE EMPLOYER.—An employer whose petition for temporary alien agricultural workers is approved shall, for each approved petition, pay a fee that—

“(I) subject to subclause (II), is equal to \$100 plus \$10 for each approved H–2C worker; and

“(II) does not exceed \$1,000.

“(ii) ASSOCIATION.—Each employer-member of a joint employer association whose petition for H–2C workers is approved shall, for each such approved petition, pay a fee that—

“(I) subject to subclause (II), is equal to \$100 plus \$10 for each approved H–2C worker; and

“(II) does not exceed \$1,000.

“(iii) LIMITATION ON ASSOCIATION FEES.—A joint employer association under clause (ii) shall not be charged a separate fee.

“(C) METHOD OF PAYMENT.—The fees collected under this paragraph shall be paid by check or money order to the Department of Agriculture. In the case of employers of H–2C workers that are members of a joint employer association petitioning on their behalf, the aggregate fees for all employers of H–2C workers under the petition may be paid by 1 check or money order.

“(i) ENFORCEMENT.—

“(1) INVESTIGATIONS AND AUDITS.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of the H–2C program. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture’s investigatory and auditing power.

“(2) FAILURE TO MEET CONDITIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (b), or a material misrepresentation of fact in a petition under subsection (b), the Secretary—

“(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

“(B) may disqualify the employer from the employment of H–2C workers for a period of 1 year.

“(3) PENALTIES FOR WILLFUL FAILURE.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material

condition of subsection (b), or a willful misrepresentation of a material fact in a petition under subsection (b), the Secretary—

“(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate;

“(B) may disqualify the employer from the employment of H-2C workers for a period of 2 years;

“(C) may, for a subsequent violation not arising out of the prior incident, disqualify the employer from the employment of H-2C workers for a period of 5 years; and

“(D) may, for a subsequent violation not arising out of the prior incident, permanently disqualify the employer from the employment of H-2C workers.

“(4) PENALTIES FOR DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in a petition under subsection (b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment of the H-2C worker or during the 30-day period preceding such period of employment, the Secretary—

“(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed \$15,000 per violation) as the Secretary determines to be appropriate;

“(B) may disqualify the employer from the employment of H-2C workers for a period of 5 years; and

“(C) may, for a second violation, permanently disqualify the employer from the employment of H-2C workers.

“(j) FAILURE TO PAY WAGES OR REQUIRED BENEFITS.—

“(1) ASSESSMENT.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, that the employer has failed to provide the benefits, wages, and working conditions attested by the employer under subsection (b), the Secretary shall assess payment of back wages, or such other required benefits, due any United States worker or H-2C worker employed by the employer in the specific employment in question.

“(2) AMOUNT.—The back wages or other required benefits described in paragraph (1)—

“(A) shall be equal to the difference between the amount that should have been paid and the amount that was paid to such worker; and

“(B) shall be distributed to the worker to whom such wages or benefits are due.

“(k) MINIMUM WAGES, BENEFITS, AND WORKING CONDITIONS.—

“(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

“(A) IN GENERAL.—Each employer seeking to hire United States workers shall offer such workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2C workers. No job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer’s H-2C workers.

“(B) INTERPRETATION.—Every interpretation and determination made under this section or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made so that—

“(i) the services of workers to their employers and the employment opportunities afforded to workers by the employers, including those employment opportunities that require United States workers or H-2C workers to travel or relocate in order to accept or perform employment—

“(I) mutually benefit such workers, as well as their families, and employers; and

“(II) principally benefit neither employer nor employee; and

“(ii) employment opportunities within the United States benefit the United States economy.

“(2) REQUIRED WAGES.—

“(A) IN GENERAL.—Each employer petitioning for workers under subsection (b) shall pay not less than the greater of—

“(i) the prevailing wage level for the occupational classification in the area of employment; or

“(ii) the applicable Federal, State, or local minimum wage, whichever is greatest.

“(B) SPECIAL RULE.—An employer can utilize a piece rate or other alternative wage payment system as long as the employer guarantees each worker a wage rate that equals or exceeds the amount required under subparagraph (A).

“(3) EMPLOYMENT GUARANTEE.—

“(A) IN GENERAL.—

“(i) REQUIREMENT.—Each employer petitioning for workers under subsection (b) shall guarantee to offer the worker employment for the hourly equivalent of not less than 50 percent of the work hours during the total anticipated period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer.

“(ii) FAILURE TO MEET GUARANTEE.—If the employer affords the United States worker or the H-2C worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned if the worker had worked for the guaranteed number of hours.

“(iii) PERIOD OF EMPLOYMENT.—For purposes of this subparagraph, the term ‘period of employment’ means the total number of anticipated work hours and workdays described in the job offer and shall exclude the worker’s Sabbath and Federal holidays.

“(B) CALCULATION OF HOURS.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker’s Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(C) LIMITATION.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 50 percent guarantee described in subparagraph (A).

“(D) TERMINATION OF EMPLOYMENT.—

“(i) IN GENERAL.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease, pest infestation, regulatory action, or any other reason beyond the control of the employer before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker’s employment.

“(ii) REQUIREMENTS.—If a worker’s employment is terminated under clause (i), the employer shall—

“(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work day after the arrival of the worker and ending on the date on which such employment is terminated;

“(II) make efforts to transfer the United States worker to other comparable employment acceptable to the worker; and

“(III) not later than 24 hours after termination, notify (or have an association acting as an agent for the employer notify) the Secretary of Homeland Security of such termination.

“(1) PERIOD OF ADMISSION.—

“(1) IN GENERAL.—An H-2C worker shall be admitted for a period of employment, not to exceed 18 months (or 36 months as provided in subsection (o)(3)(A) for a worker employed in a job that is not of a temporary or seasonal nature), and except for shepherders, that includes—

“(A) a period of not more than 7 days prior to the beginning of the period of employment for the purpose of travel to the work site; and

“(B) a period of not more than 14 days following the period of employment for the purpose of departure or a period of not more than 30 days following the period of employment for the purpose of seeking a subsequent offer of employment by an employer pursuant to a petition under this section (or pursuant to at-will employment pursuant to section 218B during such time as that section is in effect). An H-2C worker who does not depart within these periods will be considered to have failed to maintain non-immigrant status as an H-2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with

the alien considered to have been unlawfully present for 180 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent offer of employment where the alien has not found at-will employment with a registered agricultural employer pursuant to section 218B or employment pursuant to this section.

“(2) EMPLOYMENT LIMITATION.—An alien may not be employed during the 14-day period described in paragraph (1)(B) except in the employment for which the alien is otherwise authorized.

“(m) ABANDONMENT OF EMPLOYMENT.—

“(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(c) who abandons the employment which was the basis for such admission or status—

“(A) shall have failed to maintain nonimmigrant status as an H–2C worker;

“(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i); and

“(C) shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the date of the abandonment of employment.

“(2) REPORT BY EMPLOYER.—Not later than 24 hours after an employer learns of the abandonment of employment by an H–2C worker, the employer or association acting as an agent for the employer, shall notify the Secretary of Homeland Security of such abandonment.

“(3) REMOVAL.—The Secretary of Homeland Security shall promptly remove from the United States any H–2C worker who violates any term or condition of the worker’s nonimmigrant status.

“(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien’s employment if the alien promptly departs the United States upon termination of such employment. An alien who voluntarily terminates the alien’s employment and who does not depart within 14 days shall be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the voluntary termination of employment.

“(n) REPLACEMENT OF ALIEN.—An employer may designate an eligible alien to replace an H–2C worker who abandons employment notwithstanding the numerical limitation found in section 214(g)(1)(C).

“(o) EXTENSION OF STAY OF H–2C WORKERS IN THE UNITED STATES.—

“(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2C worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (b) shall request an extension of the alien’s stay and, if applicable, a change in the alien’s employment.

“(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

“(A) IN GENERAL.—An alien who is lawfully present in the United States on the date of the filing of a petition to extend the stay of the alien may commence or continue the employment described in a petition under paragraph (1) until and unless the petition is denied. The employer shall provide a copy of the employer’s petition for extension of stay to the alien. The alien shall keep the petition with the alien’s identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

“(B) EMPLOYMENT ELIGIBILITY DOCUMENT.—Upon approval of a petition for an extension of stay or change in the alien’s authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

“(C) FILE DEFINED.—In this paragraph, the term ‘file’ means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivering by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition for an extension of stay.

“(3) LIMITATION ON AN INDIVIDUAL’S STAY IN STATUS.—

“(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2C worker (including any extensions) is 18 months for a worker employed in a job that is of a temporary or seasonal nature. For

an H-2C worker employed in a job that is not of a temporary or seasonal nature, the initial maximum continuous period of authorized status is 36 months and subsequent maximum continuous periods of authorized status are 18 months. There is no maximum continuous period of authorized status for a shepherd or for an H-2C worker who returns to the worker's permanent residence outside the United States each day.

“(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—In the case of an alien outside the United States who was employed in a job of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H-2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H-2C worker unless the alien has remained outside the United States for a continuous period equal to at least  $\frac{1}{6}$  the duration of the alien's previous period of authorized status as an H-2C worker. For an alien outside the United States who was employed in a job not of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H-2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H-2C worker unless the alien has remained outside the United States for a continuous period equal to at least the lesser of  $\frac{1}{6}$  the duration of the alien's previous period of authorized status as an H-2C worker or 3 months. There is no requirement to remain outside the United States for a shepherd or for an H-2C worker who returns to the worker's permanent residence outside the United States each day.

“(p) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, an alien who is unlawfully present in the United States on April 25, 2013, is eligible to adjust status to that of an H-2C worker.

“(q) TRUST FUND TO ASSURE WORKER RETURN.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund (in this section referred to as the ‘Trust Fund’) for the purpose of providing a monetary incentive for H-2C workers to return to their country of origin upon expiration of their visas.

“(2) WITHHOLDING OF WAGES; PAYMENT INTO THE TRUST FUND.—

“(A) IN GENERAL.—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), all employers of H-2C workers shall withhold from the wages of the workers an amount equivalent to 10 percent of the wages of each worker and pay such withheld amount into the Trust Fund.

“(B) JOBS THAT ARE NOT OF A TEMPORARY OR SEASONAL NATURE.—Employers of H-2C workers employed in jobs that are not of a temporary or seasonal nature shall pay into the Trust Fund an amount equivalent to the Federal tax on the wages paid to H-2C workers that the employer would be obligated to pay under chapters 21 and 23 of the Internal Revenue Code of 1986 had the H-2C workers been subject to such chapters.

Amounts withheld under this paragraph shall be maintained in such interest bearing account with such a financial institution as the Secretary of Agriculture shall specify.

“(3) DISTRIBUTION OF FUNDS.—Amounts paid into the Trust Fund on behalf of an H-2C worker, and held pursuant to paragraph (2)(A) and interest earned thereon, shall be paid by the Secretary of State to the worker if—

“(A) the worker applies to the Secretary of State (or the designee of such Secretary) for payment within 120 days of the expiration of the alien's last authorized stay in the United States as an H-2C worker at a United States embassy or consulate in the worker's home country;

“(B) in such application the worker establishes that the worker has complied with the terms and conditions of the H-2C program; and

“(C) in connection with the application, the H-2C worker confirms their identity.

“(4) ADMINISTRATIVE EXPENSES.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(B), and interest earned thereon, shall be paid to the Secretary of State, the Secretary of Agriculture, and the Secretary of Homeland Security in amounts equivalent to the expenses incurred by such officials in the administration of the H-2C program not reimbursed pursuant to subsection (h)(2) or section 218B(b).

“(5) LAW ENFORCEMENT.—Notwithstanding any other provision of law, amounts paid into the Trust Fund under paragraph (2), and interest earned thereon, that are not needed to carry out paragraphs (3) and (4) shall, to the extent provided in advance in appropriations Acts, be made available until expended without fiscal year limitation to the Secretary of Homeland Security to apprehend, detain, and remove aliens unlawfully present in the United States.

“(r) INVESTMENT OF TRUST FUND.—

“(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary’s judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

“(A) on original issue at the price; or

“(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest of such special obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

“(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

“(3) CREDITS TO TRUST FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

“(4) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.

“(s) AUDIT OF TRUST FUND.—The Secretary of Homeland Security annually shall audit the Trust Fund.”.

(b) AT-WILL EMPLOYMENT.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218A (as inserted by subsection (a)) the following:

**“SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H-2C WORKERS.**

“(a) AT-WILL EMPLOYMENT.—

“(1) IN GENERAL.—An H-2C worker may perform agricultural labor or services for any employer that is designated as a ‘registered agricultural employer’ pursuant to subsection (b). However, an H-2C worker may only perform labor or services pursuant to this section if the worker is already lawfully present in the United States as an H-2C worker, having been admitted or otherwise provided nonimmigrant status pursuant to section 218A, and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i). An H-2C worker who abandons the employment which was the basis for admission or status pursuant to section 218A may not perform labor or services pursuant to this section until the worker has returned to their home country, been readmitted as an H-2C worker pursuant to section 218A and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i).

“(2) PERIOD OF STAY.—An H-2C worker performing such labor or services for a registered agricultural employer is subject to the period of admission, limitation of stay in status, and requirement to remain outside the United States contained in subsections (l) and (o)(3) of section 218A.

“(3) TERMINATION OF EMPLOYMENT.—At the conclusion of at-will employment with a registered agricultural employer or the conclusion of employment pursuant to section 218A qualifying an H-2C worker to perform at-will work pursuant to this section, an H-2C worker shall find at-will employment with a registered agricultural employer or employment pursuant to section 218A within

30 days or will be considered to have failed to maintain nonimmigrant status as an H-2C worker and shall depart from the United States or be subject to removal under section 237(a)(1)(C)(i). An H-2C worker who does not so depart shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 31st day after conclusion of employment where the alien has not found at-will employment with a registered agricultural employer or employment pursuant to section 218A. However, an alien may voluntarily terminate the alien's employment if the alien promptly departs the United States upon termination of such employment. Either a registered agricultural employer or an H-2C worker may voluntarily terminate the worker's at-will employment at any time. The H-2C worker then shall find additional at-will employment with a registered agricultural employer or employment pursuant to section 218A within 30 days or will be considered to have failed to maintain nonimmigrant status as an H-2C worker and shall depart from the United States or be subject to removal under section 237(a)(1)(C)(i). An H-2C worker who does not so depart shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 31st day after conclusion of employment where the alien has not found at-will employment with a registered agricultural employer or employment pursuant to section 218A.

“(b) REGISTERED AGRICULTURAL EMPLOYERS.—The Secretary of Agriculture shall establish a process to accept and adjudicate applications by employers to be designated as registered agricultural employers. The Secretary shall require, as a condition of approving the petition, the payment of a fee to recover the reasonable cost of processing the application. The Secretary shall designate an employer as a registered agricultural employer if the Secretary determines that the employer—

“(1) employs individuals who perform agricultural labor or services;

“(2) has not been subject to debarment from receiving future temporary agricultural labor certifications pursuant to section 101(a)(15)(H)(ii)(a) within the last five years;

“(3) has not been subject to disqualification from the employment of H-2C workers within the last five years;

“(4) agrees to, if employing an H-2C worker pursuant to this section, abide by the terms of the attestations contained in section 218A(b) and the obligations contained in subsections (k) (excluding paragraph (3) of such subsection) and (q) of section 218A as if it had submitted a petition making those attestations and accepting those obligations; and

“(5) agrees to notify the Secretary of Agriculture and the Secretary of Homeland Security each time it employs an H-2C worker pursuant to this section within 24 hours of the commencement of employment and each time an H-2C worker ceases employment within 24 hours of the cessation of employment.

“(c) LENGTH OF DESIGNATION.—An employer's designation as a registered agricultural employer shall be valid for 3 years, and the designation can be extended upon reapplication for additional 3-year terms. The Secretary shall revoke a designation before the expiration of its three year term if the employer is subject to disqualification from the employment of H-2C workers subsequent to being designated as a registered agricultural employer.

“(d) ENFORCEMENT.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of this section. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigatory and audit power. The Secretary of Agriculture's enforcement powers and an employer's liability described in subsections (i) through (j) of section 218A are applicable to employers employing H-2C workers pursuant to this section.

“(e) REMOVAL OF H-2C WORKER.—The Secretary of Homeland Security shall promptly remove from the United States any H-2C worker who is or had been employed pursuant to this section on an at-will basis who is who violates any term or condition of the worker's nonimmigrant status.”.

(c) PROHIBITION ON FAMILY MEMBERS.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at the end and inserting “him, except that no spouse or child may be admitted under clause (ii)(c);”.

(d) NUMERICAL CAP.—Section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) is amended—

(1) in subparagraph (A), by striking “or” at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(C) under section 101(a)(15)(H)(ii)(c) may not exceed 500,000, except that—

“(i) the Secretary of Agriculture may decrease such number based on—  
 “(I) a shortage or surplus of workers performing agricultural labor or services;

“(II) growth or contraction in the United States agricultural industry that has increased or decreased the demand for workers to perform agricultural labor or services;

“(III) the level of unemployment and underemployment of United States workers (as defined in section 218A(a)(8)) in agricultural labor or services;

“(IV) the number of nonimmigrant workers employers sought during the preceding fiscal year pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii);

“(V) the number of H-2C workers (as defined in section 218A(a)(5)) who in the preceding fiscal year had to depart from the United States or be subject to removal under section 237(a)(1)(C)(i) because they could not find additional at-will employment within 30 days pursuant to section 218B;

“(VI) the estimated number of United States workers (as defined in section 218A(a)(8)) who worked in agriculture during the preceding fiscal year pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii); and

“(VII) the number of nonimmigrant agricultural workers issued a visa or otherwise provided nonimmigrant status pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii) during preceding fiscal years who remain in the United States out of compliance with the terms of their status;

“(ii) during any fiscal year, the Secretary of Agriculture may increase such number on an emergency basis for severe shortages of agricultural labor or services; and

“(iii) this numerical limitation shall not apply to any alien who performed agricultural labor or services in the United States for not fewer than 575 hours, or 100 days in which the alien was employed 5.75 or more hours per day, pursuant to section 7 of the AG Act during the 2-year period beginning on the date of the enactment of such Act and ending on the date that is 2 years after such date.”.

(e) WAIVER OF BARS TO ADMISSIBILITY.—Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)(v)) is amended—

(1) by striking “The Attorney General” and inserting the following:

“(I) IN GENERAL.—The Secretary of Homeland Security”.

(2) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and

(3) by adding at the end the following:

“(II) H-2C WORKERS.—The Secretary of Homeland Security shall waive clause (i) solely if necessary to allow an alien to come temporarily to the United States to perform agricultural labor or services as provided in section 101(a)(15)(H)(ii)(c), except to the extent that the alien’s unlawful presence followed after the alien’s having the status of a nonimmigrant under such section.”.

(f) PREVAILING WAGE.—Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended—

(1) in paragraph (1), by inserting “and section 218A” after “(t)(1)(A)(i)(II)”; and

(2) in paragraph (3), by inserting “and section 218A” after “(t)(1)(A)(i)(II)”.

(g) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

“Sec. 218A. Admission of temporary H-2C workers.

“Sec. 218B. At-will employment of temporary H-2C workers.”.

#### SEC. 4. MEDIATION.

A nonimmigrant having status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring a civil action for damages against the nonimmigrant’s employer, nor may any other attorney or individual bring a civil action for damages on behalf of such a nonimmigrant against the nonimmigrant’s employer, unless at least 90 days prior to bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist

the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.

**SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION.**

Section 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8)(B)(ii)) is amended by striking “under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.” and inserting “under subclauses (a) and (c) of section 101(a)(15)(H)(ii), and section 214(c), of the Immigration and Nationality Act.”.

**SEC. 6. BINDING ARBITRATION.**

(a) **APPLICABILITY.**—Any H–2C worker may, as a condition of employment with an employer, be subject to mandatory binding arbitration and mediation of any grievance relating to the employment relationship. An employer shall provide any such worker with notice of such condition of employment at the time the job offer is made.

(b) **ALLOCATION OF COSTS.**—Any cost associated with such arbitration and mediation process shall be equally divided between the employer and the H–2C worker, except that each party shall be responsible for the cost of its own counsel, if any.

(c) **DEFINITIONS.**—As used in this section:

(1) The term “condition of employment” means a term, condition, obligation, or requirement that is part of the job offer, such as the term of employment, the job responsibilities, the employee conduct standards, and the grievance resolution process, and to which an applicant or prospective H–2C worker must consent or accept in order to be hired for the position.

(2) The term “H–2C worker” means a nonimmigrant described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(ii)(c)).

**SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR SERVICES BY ALIENS WHO ARE UNLAWFULLY PRESENT.**

(a) **IN GENERAL.**—The Secretary of Homeland Security shall waive the grounds of inadmissibility contained in paragraphs (5), (6), (7), and (9)(B) of section 212(a), and the grounds of deportability contained in subparagraphs (A) through (D) of paragraph (1), and paragraph (3), of section 237(a), of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) in the case of an alien described in subsection (b) solely as may be necessary in order to allow the alien to perform agricultural labor or services. Such alien shall not be considered an unauthorized alien for purposes of section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or to be unlawfully present as long as the alien performs such labor or services. Such aliens must thereafter remain outside the United States for a period before they may be issued visas or otherwise provided status as H–2C workers.

(b) **ALIENS DESCRIBED.**—An alien described in this subsection is an alien who—

(1) was physically present in the United States on April 25, 2013; and

(2) performed agricultural labor or services in the United States for not fewer than 575 hours, or 100 days in which the alien was employed 5.75 or more hours per day, during the 2-year period ending on the date of the enactment of this Act.

**SEC. 8. ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND REFUNDABLE TAX CREDITS.**

(a) **FEDERAL PUBLIC BENEFITS.**—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act) and aliens performing agricultural labor or services pursuant to section 7 of this Act—

(1) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986;

(2) shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section; and

(3) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).

(b) **REFUNDABLE TAX CREDITS.**—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act) and aliens performing agricultural labor or services pursuant to section 7 of this Act shall not be allowed any credit under section 24 or 32 of the Internal Revenue Code of 1986. In the case of a joint return, no credit shall be allowed under either such section if both spouses are such a worker or alien.

**SEC. 9. EFFECTIVE DATES; SUNSET; REGULATIONS.**

(a) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendments made by sections 2 and 4 through 6, and subsections (a) and (c) through (f) of section 3, of this Act shall take effect on

the date that is 2 years after the date of the enactment of this Act, and the Secretary of Agriculture shall accept petitions to import an alien under sections 101(a)(15)(H)(ii)(c) and 218A of the Immigration and Nationality Act, as inserted by this Act, beginning on such date.

(2) **AT-WILL EMPLOYMENT.**—The amendment made by section 3(b) of this Act shall take effect on the date that it becomes unlawful for any person or other entity to hire, or to recruit or refer for a fee, for employment in the United States an individual (as provided in section 274A(a)(1) of the Immigration and Nationality Act) (8 U.S.C. 1324a(a)(1)) without participating in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) or an employment eligibility verification system patterned on such program’s verification system, and only if at that time the E-Verify Program (or another program patterned after the E-Verify Program) responds to inquiries made by such persons or entities by providing confirmation, tentative nonconfirmation, and final nonconfirmation of an individual’s identity and employment eligibility in such a way that indicates whether the individual is eligible to be employed in all occupations or only to perform agricultural labor or services pursuant to section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (as inserted by this Act), and if the latter, whether the nonimmigrant would be in compliance with their maximum continuous period of authorized status and requirement to remain outside the United States pursuant to sections 218A and 218B of such Act (as so added) and on what date the alien would cease to be in compliance with their maximum continuous period of authorized status.

(3) **AGRICULTURAL LABOR OR SERVICES BY ALIENS UNLAWFULLY PRESENT.**—Section 7 of this Act shall take effect on the date of the enactment of this Act and shall cease to be in effect on the date that is 2 years after such date.

(b) **OPERATION AND SUNSET OF THE H-2A PROGRAM.**—

(1) **APPLICATION OF EXISTING REGULATIONS.**—The Department of Labor H-2A program regulations published at 73 Federal Register 77110 et seq. (2008) shall be in force for all petitions approved under sections 101(a)(15)(H)(ii)(c) and 218A of the Immigration and Nationality Act, as inserted by this Act, beginning on the date of the enactment of this Act.

(2) **ADJUSTMENT OF STATUS.**—Notwithstanding any other provision of law, an alien who is unlawfully present in the United States on the date of the enactment of this Act is eligible to adjust status to that of an alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) beginning on the date of the enactment of this Act and ending on the date that is 2 years after the date of the enactment of this Act.

(3) **SUNSET.**—Beginning on the date that is 2 years after the date of the enactment of this Act, no new petition to import an alien under sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be accepted.

(c) **REGULATIONS.**—Not later than 18 months after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to implement the Secretary’s duties under this Act.

## Purpose and Summary

H.R. 1773, the “Agricultural Guestworker Act” (or “AG Act”), amends the Immigration and Nationality Act to establish a new nonimmigrant visa for an alien having a residence in a foreign country which he or she has no intention of abandoning and who is coming temporarily to the United States to perform agricultural labor or services. The new guestworker program, known as “H-2C,” will streamline access to a reliable workforce and protect farmers from abusive lawsuits. H.R. 1773 expands the definition of “agricultural labor or services” (relative to its meaning under the existing agricultural guestworker program) to include temporary, seasonal, and year-round agricultural or aquacultural work as well as the handling, packing, and processing of raw agricultural or aquacultural products.

## Background and Need for the Legislation

### I. INTRODUCTION

The Department of Labor has concluded that “[a]uthorized workers appear to be leaving farm jobs because of age or opportunities for more stable and higher paying employment outside of agriculture, and are being replaced almost exclusively by foreign-born workers.”<sup>1</sup> Philip Martin, professor of agricultural and resource economics at the University of California, Davis, estimates that fruit, vegetable, and horticulture farms hired a total of 1,220,893 individual farmworkers in 2007, 414,542 for more than 150 days and 806,351 for less than 150 days (a common definition of seasonal worker).<sup>2</sup> With regard to how many of today’s agricultural workers are unauthorized aliens, the U.S. Department of Labor’s National Agricultural Workers Survey (NAWS)<sup>3</sup> has determined, “the share of hired crop farmworkers who were not legally authorized to work in the U.S. grew from roughly 15 percent in 1989–91 to almost 55 percent in 1999–2001. Since then it has fluctuated around 50 percent.”<sup>4</sup> This figure, however, is based on self-attestation.

The American Farm Bureau Federation believes that “[the NAWS figure] is probably a lower-bound estimate because the figure is based on a response volunteered by individuals to government-authorized questioners . . . it seems reasonable that at least *some* individuals would not, and did not, volunteer the fact that they were not legally authorized to work.”<sup>5</sup> In fact, the late agricultural economist James Holt stated that “[w]hen workplace audits are conducted on the ground and the authenticity of documents are examined, the typical experience is . . . more like 75 percent or so.”<sup>6</sup>

Numerous House Judiciary Committee hearings on agricultural labor, including two in the 113th Congress, have examined how the agriculture industry has come to be dominated by illegal labor. The hearings have confirmed that many agricultural employers avoid using the existing agricultural guestworker program, known as “H-2A,” to supplement their workforce needs because it is costly, time-consuming, and flawed. Meanwhile, employers who do participate in the program report that they are burdened with excessive regulations and exposed to frivolous litigation. Unfortunately, the existing agricultural guestworker program is unsuccessful and unpredictable because of its burdensome, seemingly punitive regulations and the fact that it is poorly suited for the U.S. agriculture industry as it exists today.

Bob Stallman, president of the American Farm Bureau Federation, explained the difficulty agricultural employers face when try-

<sup>1</sup> See 73 Fed. Reg. 8540 (2008).

<sup>2</sup> See Philip Martin, *Farm Exports and Farm Labor*, 2011 Economic Policy Institute at 6 (table 4).

<sup>3</sup> The U.S. Department of Labor’s National Agricultural Workers Survey (NAWS) is the only survey that ascertains the legal status of noncitizen farmworkers. However, NAWS is limited to hired crop farmworkers and excludes hired livestock farmworkers. See <http://www.doleta.gov/agworker/naws.cfm>.

<sup>4</sup> USDA, ERS, *Farm Labor*, Background, <http://www.ers.usda.gov/topics/farm-economy/farm-labor/background.aspx#>.

<sup>5</sup> *Hearing to Review the Labor Needs of American Agriculture Before the House Comm. on Agriculture*, 110th Cong. 2nd Sess. 110–30 (2007) at 21–22 (statement of Bob Stallman, President, American Farm Bureau Federation).

<sup>6</sup> *Id.* at 84.

ing to meet their labor needs at the Committee's February 26, 2013, hearing on agricultural labor:

Farmers have done their best in the last two decades to work within a broken system. A few have been able to navigate the difficulties and expense of the H-2A program; for many others, they have relied upon work authorization documents that, in too many instances, are fraudulent. But Federal law has strictly barred them from questioning those documents, and as a result we now have a labor force that is far too reliant on workers who lack proper work authorization.<sup>7</sup>

Thus, the testimony of Bob Stallman, as well as numerous other witnesses<sup>8</sup>, has consistently underscored the fact that agricultural employers need a workable program that will provide access to a dependable, authorized labor force in order to continue producing agricultural products in the United States. For these reasons, the Committee seeks to replace the H-2A program with a new temporary visa program for agriculture.

## II. THE CURRENT PROGRAM IS UNWORKABLE

The Immigration Reform and Control Act of 1986's H-2A temporary agricultural worker program took effect in June 1987. The program, a modification of the H-2 program implemented by the Immigration and Nationality Act of 1952, allows (without quota) for aliens to come to perform agricultural labor or services of a temporary or seasonal nature.<sup>9</sup> Although the H-2A program is supposedly designed to serve the needs of agricultural employers, James Holt stated that:

What often doesn't work [about the H-2A program] are the cumbersome, bureaucratic procedures of the program. . . . In order for workers to arrive . . . by the employer's date of need, this entire process must take place in 45 days. Once the workers arrive, H-2A employers face a barrage of compliance monitoring and enforcement officers, outreach workers, social service agencies and legal service activists. Nowhere else are so few monitored by so many. Lawsuits are commonplace.

Many employers are daunted by the imposing H-2A administrative processes, and simply never try to use the program. Those who do use it must navigate a gauntlet of obstacles. Notwithstanding statutory performance deadlines, H-2A labor certifications are often issued late and after interminable haggling over the wording of application documents. The problem of late labor certifications is compounded by processing delays in approving petitions at the

<sup>7</sup>*Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program: Hearing Before the Subcomm. on Immigration and Border Security Hearing of the House Comm. on the Judiciary*, 113th Cong. 1st Sess. 113-3 (2013) at 12 (written statement of Bob Stallman on behalf of the American Farm Bureau Federation).

<sup>8</sup>*See* *Id.* (testimony of Chalmers Carr, President and CEO of Titan Farms of Ridge Spring, South Carolina), and H.R. 1773, the "Agricultural Guestworker Act": Hearing Before the Subcomm. on Immigration and Border Security of the House Comm. On the Judiciary, 113th Cong. 1st Sess. 113-12 (2013).

<sup>9</sup>*See* sec. 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act of 1952 (INA) (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

Department of Homeland Security and in securing appointments for visa applicants at U.S. consulates. During the 2007 season, the arrival of many H-2A workers was seriously delayed, imposing substantial costs and potential losses on employers who are paying a premium to do things right and comply with the law. Even brief delays in the arrival of workers can be disastrous to producers of perishable agricultural commodities.

The H-2A certification process is also unnecessarily complicated. Even though 97.5 percent of H-2A labor certification applications, and 92 percent of the job opportunities on those applications, were certified in FY 2006, it nevertheless required an extremely labor intensive, paper intensive process for individually processing, recruiting on and adjudicating every single one of the 6,717 H-2A applications certified. This process is repeated annually, notwithstanding the fact that approval rates have been in the 90 percent range for decades, and the availability of legal U.S. workers as a percentage of the need has been in single digits. This repetitious and labor intensive process for demonstrating annually that there are not sufficient able, willing and qualified eligible (i.e. legal) workers to take the jobs offered for each and every application, even when the same labor market is tested multiple times a week and month for identical job opportunities, and when the USDOL's own statistics show that more than half of the domestic agricultural workforce is illegal, is government bureaucracy at its worst.

. . . .

[T]he labor certification process, in particular, is predicated on woefully outdated assumptions with respect to the demographics of the U.S. agricultural workforce and labor supply and U.S. agricultural labor markets. This is compounded by a culture of hostility toward the program and program users within the Department of Labor. The H-2A petition adjudication and visa issuance processes are bogged down by the sheer volume of other work these agencies are mandated to perform.<sup>10</sup>

Further hindering the program is the fact there are many positions in the agriculture sector that cannot be filled by workers with H-2A visas. This is because the H-2A program grants visas only for temporary or seasonal employment. Many agricultural jobs are simply not temporary or seasonal in nature. For example, in the livestock and meat industry, jobs at slaughtering facilities and other meat processing plants cannot be filled by individuals with H-2A visas. The same goes for work at fruit and vegetable packing facilities and processing plants, at sugar mills, at dairies, in the landscaping industry, and in the production and processing of seafood products.

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<sup>10</sup>Hearing to Review the Labor Needs of American Agriculture at 17-18.

In addition, the definition of agricultural labor or services is very restrictive.<sup>11</sup> Specifically, labor “[i]n the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity” only qualifies for the H-2A program if “such operator produced more than one-half of the commodity with respect to which such service is performed.”<sup>12</sup> This is yet another bar to the participation of fruit, vegetable and meat processing plants.

Another one of the inherent flaws of the H-2A program has its roots in the labor certification requirement. Under the H-2A program, the Department of Homeland Security (DHS) can approve an employer’s petition for an alien only after the employer has applied to the Secretary of Labor for a certification that (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and (B) the employment of the alien in such labor or services will not *adversely affect* the wages and working conditions of workers in the United States similarly employed.<sup>13</sup> Despite being granted this certification, the Department of Labor requires employers in the H-2A program to pay an artificially inflated wage rate to discourage them from hiring foreign workers. This wage rate is known as the “adverse effect wage rate” or “AEWR” (the average annual weighted hourly wage rate for field or livestock workers for the region).<sup>14</sup> In practice, it serves to punish employers for hiring a legal workforce. After all, the difficulty of using H-2A, the fear of lawsuits, and the fact that H-2A employers are required to offer housing and transportation to all of their workers at their own expense<sup>15</sup> already act as a deterrent to all but the wealthiest employers.

Yet, even with AEWRs of \$12.00 an hour and over in some states, and a requirement (known as the “50 percent rule”) that H-2A employers hire any U.S. worker who shows up until the time that 50 percent of the work contract of the DHS-approved foreign workers has elapsed<sup>16</sup>, many agricultural employers *still* cannot find enough U.S. workers willing to take the jobs. At the Committee’s February 26, 2013, hearing on agricultural labor, Chalmers Carr, President and CEO of Titan Farms of Ridge Spring, South Carolina, relayed his own, not atypical, story of attempting to fill job opportunities on his farm with domestic workers:

From 2010 thru the end of 2012, my farm advertised for 2000 job opportunities. Four hundred eighty-three U.S. referrals applied for these jobs and were hired accounting for less than 25% of my workforce need. One hundred nine of the referrals that were hired never showed up to work and 321 of them quit—the vast majority in the first 2 days! Those who quit and those who never reported to work account for 89% of the workers who accepted the job! Of the

<sup>11</sup> See 20 C.F.R. sec. 655.103(c).

<sup>12</sup> 20 C.F.R. sec. 655.103(c)(1)(i)(D).

<sup>13</sup> See sec. 218(a)(1) of the INA (8 U.S.C. 1188(a)(1)).

<sup>14</sup> See 20 C.F.R. sec. 655.122(1)(1).

<sup>15</sup> 20 C.F.R. sec. 1303(g).

<sup>16</sup> See 20 C.F.R. 655.135(d).

321 who reported to work, only 31 worked the entire season. There is no way I could have produced my peach and vegetable crops with a domestic workforce!<sup>17</sup>

Thus, Mr. Carr's testimony illustrates the absurdity of the H-2A program's bureaucratic hurdles and red tape. And with regard to the 50% rule, the Bush Administration Department of Labor found:

In many situations, it appears the employer does not substitute the U.S. worker arriving under the 50 percent rule for the existing H-2A worker, but rather retains both workers and incurs the added expense in order to prevent further disruption to work flow resulting from dismissing an H-2A worker and sending that worker home. Anecdotal, employers report that the majority of the U.S. workers who are hired under the 50 percent rule remain on the job for less than the term of the H-2A contract. This means that if an employer immediately dismisses an H-2A worker when a U.S. worker is hired under the 50 percent rule, that action could result in the employer being short of labor if and when the U.S. worker leaves the job early. In any case, the concern that new workers may arrive well into the harvest cycle and create the type of disruption described above can serve as a serious disincentive for employers to participate in the H-2A program.<sup>18</sup>

It also commissioned a study that found that:

All of the categories of surveyed stakeholders, including employers, state workforce agencies, and even farm worker assistance and advocacy organizations, reported that U.S. workers hired under the 50 percent rule typically do not stay on the job for any length of time when hired, frequently losing interest in the work when they learn about the job requirements.<sup>19</sup>

In sum, the regulatory scheme imposing the AEWR and the 50 percent rule simply overburdens farmers while demonstrating little to no value as a safeguard for the employment of domestic workers.

### III. THE H-2C PROGRAM WILL NOT REPEAT THE MISTAKES OF THE H-2A PROGRAM

By sunseting the H-2A program and authorizing a new guestworker program known as the "H-2C" program, the AG Act will improve access to a stable, legal agricultural workforce that employers can call upon when sufficient American labor cannot be found. In a significant shift, under the AG Act the United States Department of Agriculture (USDA) will be charged with administering the guestworker program, rather than the Department of Labor (DOL). This is both because DOL is responsible for formulating and administering many of the H-2A program's burdensome regulations and because USDA has a unique understanding of the needs of America's farm and ranch operations and the challenges of processing raw, perishable agricultural commodities.

<sup>17</sup> *Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program* at 20 (written statement of Chalmers Carr of Titan Farms).

<sup>18</sup> 73 Fed. Reg. 8553 (2008).

<sup>19</sup> 73 Fed. Reg. 77127 n.3 (2008).

Further, in contrast to the H-2A program, the new H-2C program is market-driven and adaptable. It reduces bureaucratic red tape by adopting an attestation-based petition process (similar to the process used under the H-1B program for specialty occupation workers), replacing the unnecessarily punitive adverse effect wage rate with a market-based wage proposal, and abolishing the unnecessary 50% percent rule. And, in response to recommendations from the agriculture community, the AG Act expands the meaning of agricultural labor to allow dairy farms and food processors to participate in the program.

Another notable reform is the addition of an “at-will” employment option. Employers will be able to hire H-2C workers on a contract or an at-will basis, making it easier for workers to meet employment needs in the agricultural marketplace. “Agriculture production and processing varies from crop to crop, animal to animal from state to state. Operations’ labor needs can be as short as 15 days, to year round and a new program must be flexible to ensure it is available to all of agriculture”<sup>20</sup> However, to prevent at-will guestworkers from seeking to work illegally in non-agricultural jobs, provisions for at-will guestworkers will not take effect until a mandatory E-Verify program is implemented. As Bob Stallman acknowledged, “there has to be a system and process for monitoring these workers to be sure they are meeting the requirements of their work status, and E-Verify is definitely a way to do that.”<sup>21</sup>

In addition, the H-2C program will allow employers to offer housing and transportation benefits, but it does not mandate such benefits. The Committee believes that competition for a limited pool of temporary workers, coupled with the ability of workers to move more freely throughout the marketplace, will result in employers and workers reaching mutually agreeable employment terms. After all, no guestworker program other than the H-2A program requires employers to be responsible for transportation costs to and from the U.S. or provide free housing.

To account for the year-round nature of agriculture work in many regions of the United States, as well as the non-seasonal nature of industries processing raw agricultural commodities, such as meat, the AG Act also allows for a generous maximum length of stay for agriculture guestworkers of 18 months before they must return home. Workers in year-round industries will be permitted to enter the U.S. for an initial period of 3 years so that employers can make worthwhile efforts to train such workers. However, despite requests from many in the agriculture sector to provide for a blanket visa term of 3 years or longer, the Committee believes that such a long-term authorization is not consistent with the concept of a guestworker program. Guestworker programs have an important role: they provide legal, viable opportunities for non-immigrants to work temporarily in the U.S. as a means of providing a better life for their families back home. Therefore, workers’ maintenance of strong ties to family and community back home is an essential component of a successful guestworker program. In the case of unauthorized aliens who adjust status to that of H-2C

<sup>20</sup>*Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program* at 32 (written statement of Chalmers Carr).

<sup>21</sup>*Id.* at 50.

workers under the AG Act, the re-establishment of these ties will be important as well.

To ensure that H-2C workers abide by the length of stay limitations in the program, employers of H-2C workers will be required to withhold from their wages an amount equivalent to 10 percent of the wages of each worker and pay such withheld amount into a trust fund. The workers can pick up the escrowed amounts plus interest at a United States embassy or consulate in their home countries. Also to ensure that H-2C workers return home, the Act does not permit workers to bring spouses and minor children to the U.S. unless they also qualify as guestworkers. The 3- and 10-year bars to admissibility for illegal presence<sup>22</sup> apply to H-2C workers as soon as they overstay their admittance, and employers must report to DHS H-2C workers who abandon their employment within 24 hours.

In order to discourage frivolous and abusive litigation against H-2C employers, employers may require as a condition of employment that H-2C workers be subject to binding arbitration and mediation of any grievances relating to the employment relationship. In all cases, civil actions for damages cannot be brought against employers unless at least 90 days prior to bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.

Chalmers Carr echoed the sentiment of countless other H-2A employers in his testimony when he stated:

The publicly funded Legal Services Corporation agents across the country have a long history of filing what most people would call frivolous lawsuits against agricultural employers over relatively minor issues. Because an employer has no ability to cure minor mistakes or to have binding mediation or arbitration, they often fall prey to these lawsuits and typically settle out of court because the expense to battle in court is higher than the cost to settle.<sup>23</sup>

The bill provides that LSC-funded entities may not provide legal assistance to H-2C workers. Thus, the AG Act will reduce the specter of abusive litigation associated with participation in an agricultural guestworker program.

Finally, many, although not all, of the Committee's witnesses agreed that "[i]n order to provide short-term stability and an orderly, effective transition to a new guest worker program, it is imperative that any legislation approved by Congress include provisions permitting current agricultural workers who might not otherwise qualify to obtain work authorization."<sup>24</sup> Giev Kashkooli of the United Farmer Workers of America went a step farther, stating that the number one priority of the organization he represents is reform that includes "a workable legalization program for the one million or more farm workers who are currently working in the

<sup>22</sup> See sec. 212(a)(9)(B)(i) of the Immigration and Nationality Act.

<sup>23</sup> *Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program* at 31 (written statement of Chalmers Carr of Titan Farms).

<sup>24</sup> *Id.* at 14 (written statement of Bob Stallman on behalf of the American Farm Bureau Federation).

fields and their immediate family members with a roadmap first to permanent resident status, and then to citizenship.”<sup>25</sup>

The Committee recognizes the vital role that unauthorized alien farmworkers play in United States agriculture today, and the challenges agricultural employers have faced in their efforts to employ a legal workforce. Therefore, this Act provides unauthorized farmworkers who would otherwise be barred from joining a guestworker program a chance to work lawfully in agriculture under the new H-2C program, provided that they first return home and a job is available. The Committee will not support proposals that would merely repeat the immigration reform mistakes of the past. With regard to the legalization of unauthorized immigrant farmworkers in 1986, by 1992 the percentage of crop workers who had been granted permanent residence through the 1986 Act had fallen to only 20 percent.<sup>26</sup> Thus, experience has taught us that granting unauthorized farmworkers a special pathway to citizenship is not a solution to the farm labor crisis.

#### IV. THE H-2C PROGRAM WILL PROTECT THE JOBS OF DOMESTIC WORKERS WITHOUT OVERBURDENING EMPLOYERS

The AG Act includes critical safeguards to ensure that the hiring of U.S. workers continues to be a priority. It retains strict recruiting obligations for U.S. workers and the requirement that employers offer the same wages, benefits and working conditions to domestic workers and H-2C workers alike. The AG Act also includes a minimum work guarantee. In addition, this Act will promote the employment of U.S. workers by requiring non-seasonal agricultural employers to pay an additional fee when they hire temporary foreign workers to make up for the fact that temporary agricultural workers are not covered by the Social Security system.<sup>27</sup>

#### V. CONCLUSION

The Committee notes the broad consensus that there are insufficient authorized U.S. workers able, willing, and qualified to perform many of our nation’s agricultural jobs. The goal of the AG Act is to facilitate the timely, free-flowing movement of workers and allow growers and other agricultural employers to supplement their workforces when sufficient American labor cannot be found. The Committee intends that no provision in this Act shall be interpreted in a way that supports the imposition of an adverse effect wage rate of any kind, or any other measure the nature of which is contrary to the understanding that the future of U.S. agriculture depends on the ability of agricultural employers to hire legal, temporary, foreign workers when reasonable measures to attract U.S. workers do not yield the help needed.

The AG Act will help alleviate labor shortages and ensure that America’s farmers, ranchers, and food processors can continue to produce the world’s safest and most abundant food supply here in the United States. The Committee believes that the H-2C program created by this bill can deter illegal immigration, protect the jobs of U.S. workers, prevent the exploitation of unauthorized workers,

<sup>25</sup> *Id.* at 46 (written testimony of Giev Kashkooli on behalf of United Farm Workers).

<sup>26</sup> See *Immigration Reform: Agriculture*, Rural Migration News Apr. 2013; Vol. 19 No. 2. Available at [http://migration.ucdavis.edu/rmn/more.php?id=1753\\_0\\_4\\_0](http://migration.ucdavis.edu/rmn/more.php?id=1753_0_4_0).

<sup>27</sup> See 26 U.S.C. 3121(b)(B)(1).

and stabilize the agriculture industry. The adoption of this legislation will provide both a stable, legal agricultural workforce that employers can call upon when sufficient American labor cannot be found and legal work opportunities for guestworkers who are trying to provide a better life for their families.

### Hearings

The Committee on the Judiciary held a hearing entitled, “Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program” on February 26, 2013. Testimony was received from Bob Stallman, President of the American Farm Bureau Federation; Chalmers Carr, President and CEO of Titan Farms of Ridge Spring, South Carolina; Michael J. Brown, President of the National Chicken Council; and Giev Kashkooli, Political/Legislative Director and 3rd Vice President of United Farm Workers.

Subsequently, on May 16, 2013, the Committee on the Judiciary held a hearing on H.R. 1773. Testimony was received from Lee Wicker, Deputy Director of the North Carolina Growers Association; Christopher Gaddis, Chief Human Resources Officer of JBS, USA Holdings, Inc.; John Graham, President of Graham and Rollins, Inc., of Hampton, Virginia; and Arturo Rodriquez, President of the United Farm Workers.

### Committee Consideration

On June 19, 2013, the Committee met in open session and ordered the bill H.R. 1773 favorably reported with an amendment, by a rollcall vote of 20 to 16, a quorum being present.

### Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee’s consideration of H.R. 1773.

1. An amendment offered by Mr. Goodlatte that would make improvements to the H-2C agricultural guestworker program and clarify growers’ access to agricultural labor before the implementation of the new program. Approved by a vote of 17–15.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....	X		
Mr. Coble (NC) .....	X		
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....	X		
Mr. Bachus (AL) .....	X		
Mr. Issa (CA) .....			
Mr. Forbes (VA) .....	X		
Mr. King (IA) .....			
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....			
Mr. Jordan (OH) .....	X		

## ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Poe (TX) .....			
Mr. Chaffetz (UT) .....	X		
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....	X		
Mr. Amodei (NV) .....	X		
Mr. Labrador (ID) .....	X		
Ms. Farenthold (TX) .....	X		
Mr. Holding (NC) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Smith (MO) .....			
Mr. Conyers, Jr. (MI), Ranking Member .....		X	
Mr. Nadler (NY) .....		X	
Mr. Scott (VA) .....		X	
Mr. Watt (NC) .....			
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....			
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Pierluisi (PR) .....		X	
Ms. Chu (CA) .....		X	
Mr. Deutch (FL) .....		X	
Mr. Gutierrez (IL) .....		X	
Ms. Bass (CA) .....		X	
Mr. Richmond (LA) .....		X	
Ms. DelBene (WA) .....		X	
Mr. Garcia (FL) .....		X	
Mr. Jeffries (NY) .....		X	
Total .....	17	15	

2. An amendment offered by Mr. Chaffetz that would direct that any money left over in the escrow trust fund after the appropriate agencies have been reimbursed for the expense of administering the guestworker program shall be distributed to the Department of Homeland Security to use to apprehend, detain, and remove aliens unlawfully present in the U.S. Approved by a vote of 20–16.

## ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Coble (NC) .....	X		
Mr. Smith (TX) .....	X		
Mr. Chabot (OH) .....	X		
Mr. Bachus (AL) .....			
Mr. Issa (CA) .....	X		
Mr. Forbes (VA) .....	X		
Mr. King (IA) .....			

## ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....	X		
Mr. Chaffetz (UT) .....	X		
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....	X		
Mr. Amodei (NV) .....	X		
Mr. Labrador (ID) .....	X		
Ms. Farenthold (TX) .....	X		
Mr. Holding (NC) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Smith (MO) .....	X		
Mr. Conyers, Jr. (MI), Ranking Member .....		X	
Mr. Nadler (NY) .....		X	
Mr. Scott (VA) .....		X	
Mr. Watt (NC) .....			
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Pierluisi (PR) .....		X	
Ms. Chu (CA) .....		X	
Mr. Deutch (FL) .....		X	
Mr. Gutierrez (IL) .....		X	
Ms. Bass (CA) .....		X	
Mr. Richmond (LA) .....		X	
Ms. DelBene (WA) .....		X	
Mr. Garcia (FL) .....		X	
Mr. Jeffries (NY) .....		X	
Total .....	20	16	

3. An amendment offered by Mr. Johnson of Georgia that would eliminate provisions in the bill that would 1) prohibit an H-2C worker from suing an employer unless the parties first attempted resolve the dispute through mediation and 2) permit agreements between workers and employers for mandatory binding arbitration and mediation of any grievances. Defeated by a vote of 15–19.

## ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Coble (NC) .....		X	
Mr. Smith (TX) .....		X	
Mr. Chabot (OH) .....		X	
Mr. Bachus (AL) .....		X	

## ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Issa (CA) .....			
Mr. Forbes (VA) .....		X	
Mr. King (IA) .....			
Mr. Franks (AZ) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....		X	
Mr. Chaffetz (UT) .....		X	
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....		X	
Mr. Amodei (NV) .....		X	
Mr. Labrador (ID) .....		X	
Ms. Farenthold (TX) .....		X	
Mr. Holding (NC) .....		X	
Mr. Collins (GA) .....			
Mr. DeSantis (FL) .....		X	
Mr. Smith (MO) .....		X	
Mr. Conyers, Jr. (MI), Ranking Member .....	X		
Mr. Nadler (NY) .....	X		
Mr. Scott (VA) .....	X		
Mr. Watt (NC) .....	X		
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Pierluisi (PR) .....			
Ms. Chu (CA) .....	X		
Mr. Deutch (FL) .....	X		
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....	X		
Mr. Richmond (LA) .....	X		
Ms. DelBene (WA) .....	X		
Mr. Garcia (FL) .....	X		
Mr. Jeffries (NY) .....	X		
Total .....	15	19	

4. An amendment offered by Ms. Jackson Lee that would allow attorneys funded by the Legal Services Corporation to represent H-2C workers. Defeated by a vote of 14–19.

## ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Coble (NC) .....		X	
Mr. Smith (TX) .....		X	
Mr. Chabot (OH) .....		X	
Mr. Bachus (AL) .....		X	

## ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Issa (CA) .....			
Mr. Forbes (VA) .....		X	
Mr. King (IA) .....			
Mr. Franks (AZ) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....			
Mr. Chaffetz (UT) .....		X	
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....		X	
Mr. Amodei (NV) .....		X	
Mr. Labrador (ID) .....		X	
Ms. Farenthold (TX) .....		X	
Mr. Holding (NC) .....		X	
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Smith (MO) .....		X	
Mr. Conyers, Jr. (MI), Ranking Member .....	X		
Mr. Nadler (NY) .....	X		
Mr. Scott (VA) .....	X		
Mr. Watt (NC) .....			
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Pierluisi (PR) .....	X		
Ms. Chu (CA) .....	X		
Mr. Deutch (FL) .....	X		
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....	X		
Mr. Richmond (LA) .....			
Ms. DelBene (WA) .....	X		
Mr. Garcia (FL) .....	X		
Mr. Jeffries (NY) .....	X		
Total .....	14	19	

5. An amendment offered by Ms. Chu that would eliminate provisions in the bill that would create an escrow trust fund for the purpose of providing a monetary incentive for H-2C workers to return to their home countries. Defeated by a vote of 12–18.

## ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Coble (NC) .....		X	
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....		X	

## ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Bachus (AL) .....		X	
Mr. Issa (CA) .....			
Mr. Forbes (VA) .....		X	
Mr. King (IA) .....			
Mr. Franks (AZ) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....			
Mr. Chaffetz (UT) .....		X	
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....		X	
Mr. Amodei (NV) .....		X	
Mr. Labrador (ID) .....		X	
Ms. Farenthold (TX) .....		X	
Mr. Holding (NC) .....		X	
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Smith (MO) .....		X	
Mr. Conyers, Jr. (MI), Ranking Member .....	X		
Mr. Nadler (NY) .....	X		
Mr. Scott (VA) .....	X		
Mr. Watt (NC) .....			
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....			
Mr. Johnson (GA) .....	X		
Mr. Pierluisi (PR) .....	X		
Ms. Chu (CA) .....	X		
Mr. Deutch (FL) .....	X		
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....	X		
Mr. Richmond (LA) .....			
Ms. DelBene (WA) .....	X		
Mr. Garcia (FL) .....			
Mr. Jeffries (NY) .....	X		
Total .....	12	18	

6. An amendment offered by Mr. King of Iowa that would eliminate provisions in the bill that would permit an alien who is unlawfully present in the United States to adjust status to that of a lawful H-2C worker. Defeated by a vote of 6–22.

## ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Coble (NC) .....		X	
Mr. Smith (TX) .....			

## ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Chabot (OH) .....			
Mr. Bachus (AL) .....		X	
Mr. Issa (CA) .....		X	
Mr. Forbes (VA) .....		X	
Mr. King (IA) .....	X		
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....			
Mr. Jordan (OH) .....			
Mr. Poe (TX) .....		X	
Mr. Chaffetz (UT) .....		X	
Mr. Marino (PA) .....			
Mr. Gowdy (SC) .....			
Mr. Amodei (NV) .....		X	
Mr. Labrador (ID) .....		X	
Ms. Farenthold (TX) .....	X		
Mr. Holding (NC) .....			
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Smith (MO) .....	X		
Mr. Conyers, Jr. (MI), Ranking Member .....		X	
Mr. Nadler (NY) .....		X	
Mr. Scott (VA) .....		X	
Mr. Watt (NC) .....		X	
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Pierluisi (PR) .....		X	
Ms. Chu (CA) .....		X	
Mr. Deutch (FL) .....		X	
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Ms. DelBene (WA) .....		X	
Mr. Garcia (FL) .....			
Mr. Jeffries (NY) .....		X	
Total .....	6	22	

7. An amendment offered by Ms. Lofgren that would change the limit on the total number aliens who may be issued visas under the H-2C program in any fiscal year from 500,000 to 250,000. Defeated by a vote of 16–20.

## ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....		X	
Mr. Coble (NC) .....		X	

## ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Smith (TX) .....		X	
Mr. Chabot (OH) .....		X	
Mr. Bachus (AL) .....		X	
Mr. Issa (CA) .....		X	
Mr. Forbes (VA) .....		X	
Mr. King (IA) .....			
Mr. Franks (AZ) .....		X	
Mr. Gohmert (TX) .....			
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....		X	
Mr. Chaffetz (UT) .....		X	
Mr. Marino (PA) .....			
Mr. Gowdy (SC) .....		X	
Mr. Amodei (NV) .....		X	
Mr. Labrador (ID) .....		X	
Ms. Farenthold (TX) .....		X	
Mr. Holding (NC) .....		X	
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Smith (MO) .....		X	
Mr. Conyers, Jr. (MI), Ranking Member .....	X		
Mr. Nadler (NY) .....	X		
Mr. Scott (VA) .....	X		
Mr. Watt (NC) .....	X		
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Pierluisi (PR) .....	X		
Ms. Chu (CA) .....	X		
Mr. Deutch (FL) .....	X		
Mr. Gutierrez (IL) .....	X		
Ms. Bass (CA) .....	X		
Mr. Richmond (LA) .....			
Ms. DelBene (WA) .....	X		
Mr. Garcia (FL) .....	X		
Mr. Jeffries (NY) .....	X		
Total .....	16	20	

8. On reporting the bill as amended, approved by a vote of 20 to 16.

## ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....	X		
Mr. Coble (NC) .....	X		
Mr. Smith (TX) .....	X		

## ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Chabot (OH) .....	X		
Mr. Bachus (AL) .....	X		
Mr. Issa (CA) .....	X		
Mr. Forbes (VA) .....	X		
Mr. King (IA) .....			
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....			
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....	X		
Mr. Chaffetz (UT) .....	X		
Mr. Marino (PA) .....			
Mr. Gowdy (SC) .....	X		
Mr. Amodei (NV) .....	X		
Mr. Labrador (ID) .....	X		
Ms. Farenthold (TX) .....	X		
Mr. Holding (NC) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Smith (MO) .....	X		
Mr. Conyers, Jr. (MI), Ranking Member .....		X	
Mr. Nadler (NY) .....		X	
Mr. Scott (VA) .....		X	
Mr. Watt (NC) .....		X	
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Pierluisi (PR) .....		X	
Ms. Chu (CA) .....		X	
Mr. Deutch (FL) .....		X	
Mr. Gutierrez (IL) .....		X	
Ms. Bass (CA) .....		X	
Mr. Richmond (LA) .....			
Ms. DelBene (WA) .....		X	
Mr. Garcia (FL) .....		X	
Mr. Jeffries (NY) .....		X	
Total .....	20	16	

**Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

### **Congressional Budget Office Cost Estimate**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1773, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 25, 2014.*

Hon. BOB GOODLATTE, CHAIRMAN,  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1773, the “Agricultural Guestworker Act.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa Merrell, who can be reached at 225–3220.

Sincerely,

DOUGLAS W. ELMENDORF,  
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

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### **H.R. 1773—Agricultural Guestworker Act.**

As ordered reported by the House Committee on the Judiciary  
on June 19, 2013.

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#### **SUMMARY**

H.R. 1773 would amend immigration laws to increase the number of noncitizens who could receive nonimmigrant (temporary) visas for work in agriculture. CBO estimates that enacting H.R. 1773 would increase the U.S. population by about 160,000 people in 2017, when the Department of Agriculture would begin issuing the new type of visa that would be created under the law, and about 400,000 people in 2024.

CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 1773 would increase direct spending—because of the increased number of people in the United States—by about \$2.1 billion over the 2015–2024 period. Additionally, CBO and JCT estimate that enacting H.R. 1773 would increase revenues by about \$1.8 billion over the 2015–2024 period.

On balance, therefore, CBO and JCT estimate that the effects of H.R. 1773 on direct spending and revenues would increase deficits

by about \$0.3 billion over the 2015–2024 period. However, the bill would reduce on-budget deficits by \$1.9 billion over the same period, while increasing off-budget deficits by \$2.2 billion over that period. Pay-as-you-go procedures apply to the legislation because it would affect on-budget direct spending and revenues.

Assuming appropriation of the necessary amounts, CBO also expects that implementing the bill would have a discretionary cost of about \$1.7 billion over the 2015–2024 period.

H.R. 1773 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). H.R. 1773 would impose private-sector mandates, as defined in UMRA, by requiring employers to deposit a portion of the wages of foreign agricultural workers into a Federal trust fund. CBO estimates that the total costs for employers to comply with the mandates in the bill would fall well below the annual threshold established in UMRA for private-sector mandates (\$152 million in 2014, adjusted annually for inflation).

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effects of H.R. 1773 are shown in Table 1. The costs of this legislation would fall within budget functions 150 (international affairs), 350 (agriculture), 500 (education, training, employment, and social services), 550 (health), 570 (Medicare), 600 (income security), 650 (Social Security), and 750 (administration of justice).

TABLE 1. SUMMARY OF ESTIMATED BUDGETARY EFFECTS OF H.R. 1773

	By Fiscal Year, in Millions of Dollars												2015-	2015-
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024			2019	2024
<b>CHANGES IN DIRECT SPENDING</b>														
Estimated Budget Authority	0	0	75	131	124	245	316	366	396	435	330	2,088		
Estimated Outlays	0	0	75	131	124	245	316	366	396	435	330	2,088		
<b>CHANGES IN REVENUES</b>														
Estimated Revenues	0	0	28	128	203	247	267	288	298	292	359	1,751		
On-budget	0	0	107	321	468	558	600	620	638	654	896	3,965		
Off-budget <sup>a</sup>	0	0	-79	-193	-265	-311	-332	-331	-340	-361	-538	-2,214		
<b>NET INCREASE OR DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES</b>														
Effect on the Deficit	0	0	48	3	-80	-2	49	78	98	143	-29	337		
On-budget	0	0	-31	-190	-345	-313	-283	-254	-242	-219	-567	-1,877		
Off-budget <sup>a</sup>	0	0	79	193	265	311	332	331	340	361	538	2,214		
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>														
Estimated Authorization Level	0	0	-37	-6	142	231	297	343	383	416	100	1,769		
Estimated Outlays	0	0	-30	-12	113	213	284	333	375	410	71	1,686		

Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.

Note: Components may not sum to totals because of rounding.

a. Revenues from Social Security taxes are classified as "off-budget."

## BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2015, that the necessary amounts will be appropriated near the beginning of each fiscal year, and that spending will follow historical patterns for existing or similar activities. CBO also assumes that, under the bill, the Department of Agriculture would begin providing the new type of nonimmigrant agricultural visas at the start of fiscal year 2017.

*Effects on the U.S. Population*

H.R. 1773 would expand the definition of “agricultural labor and services” and replace the current H-2A visa program for agricultural workers with a new H-2C visa program that would increase the number of noncitizens who could lawfully enter the United States on a temporary basis.

CBO’s estimate of the increase in population under the bill takes into account several factors, including the expected mortality of noncitizens and the likelihood that some noncitizens would remain in the country after their visas expire. The estimate of the increase in population also includes estimates of the number of children who would be born in the United States to foreign-born individuals who would not otherwise have been present here; as under current law, those children would automatically be U.S. citizens from the time of their birth.

Taking all of those factors together, CBO estimates that enacting H.R. 1773 would increase the U.S. population by about 160,000 people in 2017 when the Department of Agriculture would begin issuing H-2C visas. The number of H-2C workers in the country would increase by about 100,000 between 2017 and 2019 as additional workers enter the country. By 2024, CBO estimates that enacting H.R. 1773 would increase the U.S. population by about 400,000 people, including H-2C workers, their citizen children, and workers who remained in the country once their visas had expired.

Under current law, noncitizens may apply for and receive an H-2A visa to live in the United States and work in the agriculture sector for up to 1 year. There is no statutory limit on the number of H-2A visas that can be issued each year, though the State Department has issued an average of 58,000 visas a year over the last several years. H.R. 1773 would eliminate the H-2A visa program 2 years after enactment and replace it with an H-2C visa for agricultural workers. Significant aspects of the H-2C program are described below:

- An H-2C visa would be available for a broader spectrum of agricultural work than under the H-2A program, including all activities required for preparing, processing, or manufacturing a product of agriculture or fishing. Workers in those latter occupations are not currently eligible for H-2A visas.
- The H-2C program would be capped at 500,000 visas per year.
- H-2C workers could remain in the country for 18 months to 36 months, depending on the nature of their work, and could reapply for a visa after returning home.

- Employers of all H-2C workers would be required to withhold 10 percent of the workers' wages and place those amounts in a Federal trust fund. Employers of some H-2C workers also would have to pay the equivalent of certain payroll taxes.
- H.R. 1773 would allow some noncitizens currently in the country without authorization to qualify for an H-2C visa. Employers would need to petition for the worker, the worker would need to leave the country before getting the visa, the visa would be good for a limited time, and the worker would face wage withholding as specified in the bill. Consequently, CBO estimates that few unauthorized residents would apply for and receive H-2C visas.
- One component of the H-2C program would allow workers to find employment with other approved employers, once their initial work contract with the petitioning employer was finished. That program would be contingent on subsequent legislation that would implement a nationwide employment verification system affecting all employers, and any budgetary effects would be assigned to such legislation.

CBO expects that the new categories of agricultural workers eligible for H-2C visas would result in an increase in the number of visas issued, but CBO does not expect that number to reach the cap (500,000 per year) authorized in H.R. 1773 over the next 10 years.

#### *Immigration and Eligibility for Federal Benefits*

The eligibility of noncitizens for many Federal benefit programs is determined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and a host of program-specific laws. In brief, the eligibility of noncitizens who meet the programs' requirements not related to immigration, such as income and asset thresholds, is generally determined as follows:\*

**Earned Income Tax Credit and Child Tax Credit.** Noncitizens with Social Security numbers that are valid for employment are eligible to receive the nonrefundable and refundable portions of the Earned Income Tax Credit (EITC). Resident aliens (noncitizens who live in the United States) are eligible to receive the nonrefundable and refundable portions of the child tax credit for qualifying children.

**Medicaid and the Children's Health Insurance Program (CHIP).** Nonimmigrants are not eligible for full Medicaid and CHIP benefits, except in certain cases. Under current law, states have the option to provide full Medicaid and CHIP benefits to certain groups of legal immigrants under the Children's Health Insurance Program Reauthorization Act of 2009. That law gave states the option to extend Medicaid and CHIP to children and pregnant women who are lawfully residing in the United States and who would not otherwise be eligible under PRWORA; 27 states and the

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\*For a more-detailed explanation of noncitizens' eligibility for those programs, see pages 25–32 of CBO's cost estimate (dated June 18, 2013) for S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, as reported by the Senate Committee on the Judiciary on May 28, 2013.

District of Columbia currently provide such coverage. Citizen children born to immigrants are eligible for full Medicaid and CHIP benefits regardless of their parents' immigration status. For other noncitizens, Medicaid pays for a limited benefit that covers the cost of services necessary for the treatment of emergency medical conditions.

**Health Insurance Subsidies.** The Affordable Care Act (ACA) authorized the creation of insurance exchanges through which individuals and families who meet various requirements are eligible for premium assistance tax credits to cover some of the cost of purchasing health insurance and additional subsidies to reduce cost-sharing payments under those insurance policies. H.R. 1773 would specifically bar temporary agricultural workers from receiving subsidies for health insurance purchased through insurance exchanges created under the ACA. Citizen children born in the United States to temporary agricultural workers, however, would not be barred from receiving subsidies if they were otherwise eligible.

**Other Programs.** Children of nonimmigrants born in the United States also would qualify for the Supplemental Nutrition Assistant Program (SNAP), child nutrition programs, and Supplemental Security Income (SSI).

#### *Direct Spending*

Overall, CBO and JCT estimate that enacting the legislation would increase direct spending by about \$2.1 billion over the 2015–2024 period (see Table 2). All of the direct spending effects are on-budget.

**Earned Income Tax Credit and Child Tax Credit.** JCT estimates that outlays for refundable tax credits would decline by about \$900 million over the 2015–2024 period. The bill would prohibit most H–2C workers from claiming child or earned income tax credits, which are refundable. Although JCT expects that enforcement of that provision could be difficult, JCT expects that the temporary agricultural workers provided for under H.R. 1773 would claim fewer refundable credits than are claimed by current agricultural workers because of that prohibition.

**Medicaid and the Children's Health Insurance Program.** CBO estimates that spending on Medicaid, including spending on services for the treatment of emergency medical conditions, would increase by about \$760 million over the 2015–2024 period under the bill. Because funding for CHIP is assumed to be constrained under CBO's baseline projections, all of those estimated costs would be for the Medicaid program.

**Health Insurance Subsidies.** CBO and JCT estimate that premium assistance tax credits and cost-sharing subsidies provided through health insurance exchanges would decrease, on net, by about \$800 million over the 2015–2024 period. That amount consists of about a \$700 million net decrease in outlays and a \$100 million net increase in revenues.\* The bill would prohibit H–2C workers from receiving health insurance subsidies through ex-

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\*\*The subsidies for health insurance premiums are structured as refundable tax credits; following the usual procedures for such credits, CBO and JCT classify the portions that exceed taxpayers' income tax liabilities as outlays, and the portions that reduce tax payments as reductions in revenues.

changes; accordingly, fewer agricultural workers would receive health insurance subsidies under H.R. 1773 than would under current law.

TABLE 2. ESTIMATED EFFECTS OF H.R. 1773 ON DIRECT SPENDING, BY PROGRAM

	By Fiscal Year, Outlays in Millions of Dollars											2015- 2019	2015- 2024
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024			
CHANGES IN DIRECT SPENDING													
Earned Income Tax Credit and Child Tax Credit <sup>a</sup>	0	0	0	-42	-83	-117	-150	-162	-167	-170	-125	-890	
Medicaid and CHIP	0	0	28	53	71	89	107	123	138	154	152	763	
Health Insurance Subsidies	0	0	-7	-51	-90	-102	-106	-110	-113	-114	-150	-695	
SNAP	0	0	*	1	1	2	3	4	5	6	2	22	
Supplemental Security Income	0	0	*	1	1	2	3	4	4	5	2	20	
Child Nutrition Programs	0	0	0	0	0	0	0	0	1	3	0	4	
Refund to Returning Workers	0	0	*	35	126	265	344	387	406	426	161	1,988	
Administrative Expenses	<u>0</u>	<u>0</u>	<u>56</u>	<u>135</u>	<u>97</u>	<u>106</u>	<u>115</u>	<u>120</u>	<u>122</u>	<u>125</u>	<u>288</u>	<u>876</u>	
Total Changes	0	0	75	131	124	245	316	366	396	435	330	2,088	

Notes: CHIP = Children's Health Insurance Program; SNAP = Supplemental Nutrition Assistance Program.

Components may not sum to totals because of rounding; \* = less than \$500,000.

a. Estimate provided by the staff of the Joint Committee on Taxation.

**Other Benefit Programs.** The changes in the U.S. population under the bill would lead to small increases in direct spending over the 2015–2024 period in SNAP, the child nutrition programs, and SSI. For those programs, the estimated budgetary effects primarily represent costs from additional children born in the United States. CBO estimates that increased spending for those other programs would total a little under \$50 million over the 2015–2024 period.

**Trust Fund.** The bill would establish a trust fund for the wages withheld from H-2C workers and the taxes paid by employers for those workers (discussed below under the heading, “Revenues”). Some of the payments from the trust fund would be direct spending, while the remainder would be subject to annual appropriation.

*Refund to Returning Workers.* Under the bill, H-2C workers could claim the amounts withheld from their wages if they apply at a U.S. embassy or consulate in their home country within 120 days of the termination of their authorized stay in the United States. They would be required to show proof of identity and establish that they complied with the program's conditions. CBO estimates that about three-quarters of all workers would depart the United States and return to their home country (20,000 in 2018, growing to 136,000 in 2024). We further estimate that about 95 percent of those workers would claim their withholdings within the 120-day period specified in the bill. On average, CBO estimates

that each worker would be paid about \$1,800 in 2018, with that figure growing to about \$3,200 in 2024. Thus, CBO estimates that the Department of State would pay claims of \$35 million in 2018 and about \$2.0 billion over the 2015–2024 period.

*Administrative Expenses.* The taxes paid by employers would be available without the need for annual appropriations to pay the administrative costs of the Department of Agriculture, the Department of State, and the Department of Homeland Security (DHS). Some of those administrative costs would be covered by fees collected by the Department of Agriculture and DHS, as discussed below under the heading “Immigration Fees.” To the extent that the trust fund does not have sufficient funds to cover those expenses, CBO expects that the departments would use appropriated funds and later be reimbursed by the trust fund.

Under the bill’s provisions, the Department of Agriculture would have to register employers, review petitions filed by employers to hire workers, conduct investigations and random audits of employers, and maintain records relating to these activities. The Department of Labor (DOL) handles similar functions for the hiring of H–2A workers under current law. Based on costs reported by DOL for those activities, CBO estimates that enacting H.R. 1773 would cost the Department of Agriculture about \$680 million through 2024.

To refund the wages withheld from workers, CBO estimates that the Department of State would incur one-time administrative costs of \$5 million over the 2016–2018 period to set up systems and procedures necessary for the claims process and to train employees. CBO expects that the costs of processing each individual claim would be similar to the department’s costs of processing visas, about \$250 per person. After adjusting for inflation, CBO estimates that payments to the Department of State for administrative costs would increase direct spending by about \$190 million through 2024.

**Immigration Fees.** The Department of Homeland Security currently collects fees to process applications for immigration services. Collections from those fees are classified as offsetting receipts (that is, a credit against direct spending) and are available for spending by DHS without further appropriation. In addition to DHS fees paid by employers of H–2C workers, the bill also would direct the Department of Agriculture to charge fees to designate firms as registered agricultural employers and to approve petitions to hire some H–2C workers. We expect the department would be able to spend those collections without further appropriation.

CBO estimates that additional fees collected by DHS and the Department of Agriculture under the bill would total less than \$10 million in each year, nearly all of which would be spent in the same year. Accordingly, the net budgetary effect from collecting and spending the fees would be decreases in direct spending of less than \$500,000 annually.

#### *Revenues*

JCT estimates that H.R. 1773 would, on net, increase revenues by about \$1.8 billion over the 2015–2024 period (see Table 3).

The biggest effect on revenues would stem from a provision that would require employers of H–2C workers to withhold 10 percent of the wages they pay and transmit those amounts to the Federal

Government. Those amounts, estimated by JCT to total about \$3.6 billion from 2015 through 2024, would be deposited into the new trust fund described above and remitted to those H-2C workers after their authorized stay in the United States expired and if they applied at a U.S. embassy or consulate in their home country.

In addition, although certain wages paid to agricultural workers temporarily admitted into the United States would continue to be exempt from payroll taxes under H.R. 1773, employers of H-2C workers in jobs that are not of a temporary or seasonal nature would be required to transmit to the Federal Government an amount that the employer would have paid in payroll taxes had those wages been subject to payroll taxation. Those amounts, which JCT estimates would total about \$2.5 billion over the 2015–2024 period, would also be deposited into the new trust fund, although such deposits would be used to reimburse certain Federal agencies to cover expenses associated with administration of the H-2C program.

Furthermore, consistent with the conventional estimating assumption that overall economic activity would not change because of the legislation, the H-2C workers under H.R. 1773 would be expected to largely replace other agricultural workers not possessing H-2A visas, many of whom have payroll taxes withheld under current law. Because H-2C workers would be largely exempt from payroll taxes, revenues from payroll taxes would decline, including an estimated decline of \$2.2 billion over the 2015–2024 period in revenues from Social Security taxes, which are considered off-budget.

Other effects of H.R. 1773 would reduce revenues on net, JCT and CBO estimate, by about \$2.1 billion over the 2015–2024 period. In particular, JCT estimates that revenues would decline on net by about \$2.2 billion over the 2015–2024 period for several reasons: on-budget receipts from Medicare payroll taxes would be lower; higher corporate income tax deductions would reduce corporate income taxes; and net individual income tax payments would be lower as a result of a substitution of H-2C workers for other agricultural workers not possessing H-2A visas. Partially offsetting those reductions in revenues, CBO and JCT estimate that premium assistance tax credits would be lower, thereby increasing revenues by \$0.1 billion over the 2015–2024 period (in addition to reducing outlays by about \$0.7 billion over the 10-year period as discussed above).

TABLE 3. ESTIMATED EFFECTS OF H.R. 1773 ON REVENUES

	By Fiscal Year, in Millions of Dollars												2015-	2015-
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024			2019	2024
<b>CHANGES IN REVENUES</b>														
10 Percent Withholding from Workers	0	0	105	291	421	501	539	556	572	590	817	3,575		
Payroll Equivalent Tax on Employers	0	0	56	166	271	351	387	398	410	423	493	2,463		
Social Security Payroll Tax (off-budget)	0	0	-79	-193	-265	-311	-332	-331	-340	-361	-538	-2,214		
Other Taxes	0	0	-56	-144	-237	-310	-342	-350	-360	-374	-437	-2,173		
Health Insurance	<u>0</u>	<u>0</u>	<u>1</u>	<u>8</u>	<u>14</u>	<u>16</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>22</u>	<u>100</u>		
Total Changes	0	0	28	128	203	247	267	288	298	292	359	1,751		

Note: Components may not sum to totals because of rounding.

*Spending Subject to Appropriation*

CBO estimates that substantial funds would remain in the trust fund (discussed above) after paying workers the amounts withheld from their wages and reimbursing the Department of Agriculture, Department of State, and DHS for administrative costs. H.R. 1773 would authorize the appropriation of those remaining amounts for DHS to apprehend, detain, and remove aliens unlawfully present in the United States. Assuming appropriation of those amounts, CBO estimates that implementing that provision would cost \$2.0 billion over the 2015–2024 period.

As discussed above, the bill would eliminate the current H-2A program, which is administered by the Department of Labor and replace it with a new H-2C program, which would be administered by the Department of Agriculture. CBO estimates that the decline in workload at DOL would reduce costs by about \$300 million over the 2015–2024 period, assuming that appropriations are reduced by the estimated amounts.

## PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. For pay-as-you-go purposes, only on-budget effects are included; thus, the decline in revenues paid into the Social Security trust funds are not included below.

CBO Estimate of Pay-As-You-Go Effects for H.R. 1773 as ordered reported by the House Committee on the Judiciary on June 19, 2013

	By Fiscal Year in Millions of Dollars													2014-	2014-
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2019	2024	2019	2024
<b>NET DECREASE IN THE ON-BUDGET DEFICIT</b>															
Statutory Pay-As-You Go Impact	0	0	0	-31	-190	-345	-313	-283	-254	-242	-219	-567	-1,877		
<b>Memorandum:</b>															
Changes in Outlays	0	0	0	75	131	124	245	316	366	396	435	330	2,088		
Changes in Revenues	0	0	0	107	321	468	558	600	620	638	654	896	3,965		

**ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

H.R. 1773 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act. The temporary visa program would increase the number of individuals eligible for Medicaid assistance. Since state governments pay for a portion of Medicaid, CBO estimates that state spending on the program would increase by about \$500 million over the 2015–2024 period. Because states have significant flexibility to alter their programmatic responsibilities for Medicaid, those costs would not result from an intergovernmental mandate.

**ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 1773 would impose private-sector mandates, as defined in UMRA, on employers of temporary foreign agricultural workers (also known as agricultural guestworkers). By replacing the current H–2A visa guestworker program with a new H–2C visa program, the bill would impose requirements on employers of agricultural guestworkers. Most of the requirements on employers of workers with H–2C visas would be equivalent to requirements under current law on employers of workers with H–2A visas. However, under the new visa program, employers of workers with H–2C visas would be required to withhold 10 percent of their wages and transmit those amounts to a trust fund operated by the Federal Government. Employers of workers with H–2C visas may incur some additional administrative costs to comply with this new requirement. The H–2C visa program also would reduce some of the existing requirements on employers of agricultural guestworkers (for example, it would eliminate some requirements for employer-provided benefits, such as subsidized transportation and free housing). In total, CBO estimates that the cost for employers to comply with the mandates in the bill would fall well below the annual threshold established in UMRA for private-sector mandates (\$152 million in 2014, adjusted annually for inflation).

ESTIMATE PREPARED BY:

**Population Estimates**  
Melissa Merrell

**Federal Spending**

Kirstin Blom, Sunita D'Monte, Elizabeth Cove Delisle, Kathleen FitzGerald, Mark Grabowicz, Sarah Masi, and David Rafferty

**Federal Revenues**

Mark Booth and the staff of the Joint Committee on Taxation

**Intergovernmental and Private-Sector Impact**

Melissa Merrell and John Rodier

ESTIMATE APPROVED BY:

Peter H. Fontaine

Assistant Director for Budget Analysis

**Duplication of Federal Programs**

No provision of H.R. 1773 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

**Disclosure of Directed Rule Makings**

The Committee estimates that H.R. 1773 specifically directs the Secretary of Agriculture to conduct one rule making proceeding within the meaning of 5 U.S.C. 551.

**Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1773 would create a nonimmigrant H–2C work visa program for agricultural workers.

**Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1773 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

**Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short Title.*

Section 1 provides that this Act may be cited as the “Agricultural Guestworker Act” or the “AG Act.”

*Sec. 2. H–2C Temporary Agricultural Work Visa Program.*

Subsection (a) of section 2 amends section 101(a)(15)(H) of the Immigration and Nationality Act to add a new visa category for individuals coming temporarily to the U.S. to perform agricultural labor or services.

Subsection (b) expands the definition of “agricultural labor or services” relative to its meaning under the existing agricultural

guestworker program. For the purposes of the Agricultural Guestworker Act, “agricultural labor or services” includes temporary, seasonal, and year-round agricultural, horticultural or aquacultural work as well as the handling, packing, and processing of raw agricultural, fish or shellfish products.

*Sec. 3. Admission of Temporary H-2C workers.*

Subsection (a) of section 3 amends chapter 2 of title II of the Immigration and Nationality Act by adding a new section (section 218A) establishing the H-2C temporary agricultural guest worker program. The following is a section-by-section analysis of the amendment made by this section:

**Section 218A. Admission of temporary H-2C workers.**

*Subsection (a) of section 218A defines “area of employment,” “displace,” “eligible individual,” “employer,” “H-2C worker,” “lay off,” “prevailing wage,” and “United States worker.”*

*Subsection (b) requires an employer seeking to hire an H-2C worker to file a petition with the Secretary of Agriculture in which the employer attests:*

- *The number of workers the employer intends to employ and the wage rate at which the employer intends to compensate them;*
- *That the employer will provide, at a minimum, the benefits, wages, and working conditions required by this Act;*
- *That no U.S. workers will be displaced during the 30-day period preceding the employment period;*
- *That the employer conducted the specified recruitment of U.S. workers and was unsuccessful in locating a qualified U.S. worker for the job;*
- *That the employer has offered and will offer the job to any U.S. worker willing and able to work up until the first day that work begins for the H-2C worker (This provision specifically precludes regulations implementing any variation of the “50% Rule.” See 20 C.F.R. 655.135(d));*
- *That insurance covering injury and disease arising out of the job will be provided if the work is not covered by State workers’ compensation law;*
- *That an H-2C worker may be transferred to another employer who has filed a petition and is in compliance with the terms of the program;*
- *That there is not a strike or lockout in the course of a labor dispute; and*
- *That the employer has not violated employment laws (with respect to domestic or nonimmigrant workers) during the previous 2-year period.*

*Subsection (c) requires the employer to make a copy of the employer’s petition available for public examination not later than 1 working day after a petition for an H-2C worker is filed.*

*Subsection (d) requires the Secretary of Agriculture to maintain a list of the petitions filed and make it available for public examination.*

*Subsection (e):*

- *Prohibits the Secretary of Agriculture from requiring that petitions be filed more than 28 days in advance;*
- *Requires the Secretary to review petitions only for completeness and obvious inaccuracies and approve or reject petitions within 10 days; and*
- *Provides that by filing a petition, an employer consents to allow access to the site where work is being performed to the Department of Agriculture and the Department of Homeland Security for compliance investigations.*

*Subsection (f):*

- *Permits associations to file petitions for workers on behalf of members;*
- *Allows associations to transfer workers among its members; and*
- *Provides that violations by a member will not disqualify an association and vice versa.*

*Subsection (g) requires the Secretary of Agriculture to promulgate regulations to provide for the expedited review of a denial of a petition and for the examination of new evidence provided by the petitioner.*

*Subsection (h):*

- *Requires the Secretary of Homeland Security to provide endorsement of entry and exit documents; and*
- *Requires the Secretary of Agriculture to collect a fee to cover the reasonable cost of processing the petitions of employers seeking H-2C workers for temporary or seasonal jobs. If the petition is approved, the fee is equal to \$100 plus \$10 for each approved worker (but cannot exceed \$1,000).*

*Subsection (i):*

- *Provides that the Secretary of Agriculture shall be responsible for conducting investigations and random audits to ensure compliance with the requirements of the H-2C program and designates that fines paid to the Department of Agriculture shall be used to enhance the Department's investigatory and auditing power;*
- *Sets penalties for failure to meet a condition of the petition and material misrepresentations with fines of up to \$1,000 and a 1-year disqualification;*
- *Sets penalties for willful failures to meet conditions of the petition and willful misrepresentations with a fine of up to \$5,000 as well as a 2-year disqualification for an initial violation, a 5-year disqualification for a second violation, and a permanent disqualification for a third violation; and*

- *Sets penalties for willful failures and misrepresentations that result in displacement of a U.S. worker with a fine of up to \$15,000 as well as a 5-year disqualification for an initial violation, and a permanent disqualification for a second violation.*

*Subsection (j) provides that if the Secretary of Agriculture finds that the employer has failed to provide the benefits, wages, and working conditions attested by the employer, the Secretary of Agriculture shall assess payment of back wages, or other required benefits, due any United States worker or H-2C worker employed by the employer in the specific employment in question.*

*Subsection (k):*

- *Requires employers to offer U.S. workers no less than the same benefits, wages, and working conditions that the employer offers to H-2C workers;*
- *Provides that every interpretation and determination made under this section or under any other law regarding the provision of benefits, wages, and other conditions of H-2C workers shall be made so that the services of workers to their employers and the employment opportunities afforded to workers by the employers mutually benefit the workers and their employers and principally benefit neither worker nor employer and that employment opportunities within the U.S. benefit the U.S. economy;*
- *Requires employers to pay H-2C workers not less than the prevailing wage rate or the applicable minimum wage for the occupation in the area of intended employment, whichever is greater;*
- *Permits employers to pay via a piece rate system as long as that rate equals or exceeds the prevailing wage; and*
- *Requires the employer to guarantee the worker employment for at least 50 percent of the work days of the total contract period, and if the employer affords the worker less employment, to pay such worker the amount the worker would have earned if they had worked the guaranteed number of hours;*

*For the purpose of the employment guarantee, subsection (k)*

- *Defines "period of employment";*
- *Provides that any hours the worker fails to work may be counted by the employer in calculating whether the period of guaranteed employment has been met;*
- *Provides that a worker who abandons his or her employment before the end of the contract or is terminated for cause is not entitled to the 50 percent guarantee; and*
- *Provides that if, before the 50 percent guarantee is fulfilled, the services of the worker are no longer required for reasons beyond the control of the em-*

*ployer, the employer may terminate the worker's employment, but shall apply and fulfill the 50 percent guarantee for the period before termination, make efforts to transfer the United States worker to other comparable employment acceptable to the worker, and shall notify the Secretary of Homeland Security of the termination.*

*Subsection (l):*

- *Permits H-2C workers to be admitted for up to 18 months to work in a job that is temporary or seasonal;*
- *Permits H-2C workers to be admitted initially for up to 36 months to work in a job that is not temporary or seasonal and for up to 18 months subsequently;*
- *Allows for admission an additional period of 1 week before the work begins (for inbound travel) and 2 weeks following the work (to be granted for the purpose of departure) or 30 days (for the purpose of seeking a subsequent job offer);*
- *Provides that an alien who does not depart within these periods shall be considered to be inadmissible for having been unlawfully present and deemed unlawfully present for 180 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent job offer; and*
- *Provides that an alien may not be employed during the 14-day departure period except in the employment for which the alien is otherwise authorized.*

*Subsection (m):*

- *Provides that an H-2C worker who abandons employment must depart the U.S, shall be considered to be inadmissible for having been unlawfully present, and shall be deemed unlawfully present for 180 days as of the 15th day following the abandonment of employment;*
- *Requires employers to notify the Secretary of Homeland Security within 24 hours after learning of the abandonment of employment by an H-2C worker;*
- *Requires the Secretary of Homeland Security to promptly remove any H-2C worker who violates any term or condition of the worker's nonimmigrant status; and*
- *Permits an alien to voluntarily terminate employment at any time if the alien promptly departs the U.S.*

*Subsection (n) permits an employer to designate an eligible alien to replace an H-2C worker who abandons employment, and provides that the replacement worker shall not count against the numerical cap.*

*Subsection (o):*

- *Requires an employer who seeks approval to extend the employment of an H-2C worker to petition for an exten-*

*sion of the alien's stay and, if applicable, a change in the alien's employment;*

- *Provides that alien lawfully present in the U.S. when a petition for an extension of his stay is filed may commence or continue to work unless the petition is denied;*
- *Provides that the employer must give the alien a copy of the petition and the alien shall keep the petition with the alien's I.D. and employment eligibility document;*
- *Requires the Secretary of Homeland Security to provide a new or updated employment eligibility document for the alien upon approval of an extension of stay.*
- *Defines "file";*
- *Provides that an H-2C worker employed in a temporary or seasonal job may not work longer 18 continuous months, including any extensions;*
- *Permits H-2C workers employed in a job that is not temporary or seasonal to initially work for up to 36 months, and to work for maximum periods of 18 months thereafter;*
- *Provides for an unlimited period of authorization for shepherders as well as H-2C workers who return to their permanent residence outside the United States each day; and*
- *Requires that aliens whose period of authorized status has expired may not apply for admission as an H-2C worker unless such alien has remained outside the U.S. for a continuous period that is equal to at least 1/6 of the duration of the alien's previous stay as an H-2C worker, with a maximum required period of 3 months for non-temporary or seasonal jobs.*

*Subsection (p) provides that an alien who is unlawfully present in the United States on April 25, 2013, is eligible to adjust status to that of an H-2C worker.*

*Subsection (q):*

- *Establishes a trust fund for the purpose of providing a monetary incentive for H-2C workers to return to their home countries;*
- *Requires employers to withhold 10 percent of the H-2C workers' wages and pay the amount into the trust fund;*
- *Requires employers of H-2C workers employed in jobs that are not temporary or seasonal to pay an amount equivalent to certain Federal taxes on wages that do not apply to the H-2C program into the trust fund;*
- *Provides that the amounts withheld will be maintained in an interest bearing account specified by the Secretary of Agriculture;*
- *Provides that the 10 percent withholding paid into the trust fund on the employee's behalf shall be paid to the worker if the worker applies to the Secretary within 120*

*days of the worker's authorized expiration of stay at a United States embassy or consulate in the worker's home country, the worker establishes that he has complied with the terms and conditions of the program, and confirms their identity;*

- *Provides that the other amounts paid into the trust fund shall be paid to the Secretary of State, Secretary of Agriculture, and the Secretary of Homeland Security in amounts equivalent to the expenses incurred by such officials in the administration of the H-2C program that have not already been reimbursed to the Secretaries; and*
- *Provides that any money left over in the trust fund, after the appropriate agencies have been reimbursed for the expense of administering the guestworker program, shall be distributed to the Department of Homeland Security to apprehend, detain, and remove aliens unlawfully present in the U.S.*

*Subsection (r):*

- *Provides that it is the duty of the Secretary of the Treasury to invest the portion of the Trust Fund that is not required to meet current withdrawals; and*
- *Provides the terms and requirements pertaining to trust fund investments.*

*Subsection (s) requires the Secretary of Homeland Security to audit the trust fund.*

Subsection (b) amends chapter 2 of title II of the Immigration and Nationality Act by adding another new section (section 218B) providing for the at-will employment of temporary H-2C workers. The following is a section-by-section analysis of the amendment made by this section:

**Sec. 218B. At-will Employment of Temporary H-2C Workers.**

*Subsection (a):*

- *Allows an at-will H-2C worker to perform agricultural labor or services for any registered agricultural employer if the worker is already lawfully present in the United States as an H-2C worker pursuant to sec. 218A and has completed their period of employment;*
- *Provides that an H-2C worker employed by a registered agricultural employer is subject to the maximum stay requirement of sec. 218A;*
- *Requires an H-2C worker to find additional agricultural employment either at-will or under sec. 218A within 30 days of the conclusion of at-will employment with a registered agricultural employer or depart the United States or be subject to removal; and*
- *Permits an alien to terminate at-will employment and voluntarily depart the United States upon termination of employment and permits an H-2C worker or a registered*

*agricultural employer to terminate at-will employment at any time.*

*Subsection (b):*

- *Requires the Secretary of Agriculture to establish a process for accepting and adjudicating applications by employers to be designated as registered agricultural employers;*
- *Requires the Secretary of Agriculture to collect a fee to recover the reasonable cost of processing the application; and*
- *Provides five conditions that must be met in order the Secretary of Agriculture to designate an employer as a registered agricultural employer.*

*Subsection (c):*

- *T3Provides that an employer's designation as a registered agricultural employer is valid for 3 years and can be extended for additional 3-year terms; and*
- *Requires the Secretary of Agriculture to revoke a designation before the expiration if an employer is subject to disqualification.*

*Subsection (d):*

- *Provides that the Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance; and*
- *Provides that all fines levied against employers shall be paid to the Department of Agriculture and used to enhance its investigatory and audit power.*

*Subsection (e) requires the Secretary of Homeland Security to promptly remove any at-will H-2C worker who violates any term or condition of the worker's nonimmigrant status.*

Subsection (c) prohibits spouses and children of H-2C workers from being admitted to the United States along with H-2C workers as accompanying family members.

Subsection (d) establishes a limit of 500,000 on the total number aliens who may be issued visas under the H-2C program in any fiscal year, but gives the Secretary of Agriculture authority to decrease the limit depending on certain factors and conditions in the agricultural employment sector or increase the number on an emergency basis. Subsection (d) also makes certain aliens who were allowed to legally work in agriculture during the 2-year period prior to implantation of the H-2C program not subject to the cap.

Subsection (e) requires the Secretary of Homeland Security to waive the 3- and 10-year bars to admissibility solely in order to allow an alien to come to the United States to work in the H-2C program.

Subsection (f) amends section 212(p) of the Immigration and National Act in order to apply the provisions pertaining to the computation of prevailing wage contained therein to the H-2C program.

Subsection (g) amends the table of contents for the Immigration and Nationality Act to include references to the new sections comprising the H-2C program.

*Sec. 4. Mediation.*

Section 4 prohibits an H-2C worker, or an attorney representing an H-2C worker, from bringing a civil action for damages against an H-2C employer unless the parties have attempted to reach a satisfactory resolution of the issues through mediation.

*Sec. 5. Migrant and Seasonal Agricultural Worker Protection.*

Section 5 exempts H-2C workers from the definition of “migrant agricultural worker” under the Migrant and Seasonal Agricultural Worker Protection Act. This provision has the effect of barring any representation of the H-2C worker in an action against their employer by an entity that has received any funding from Legal Services Corporation.

*Sec. 6. Binding Arbitration.*

Subsection (a) of section 6 permits employers to require that workers be subject to mandatory binding arbitration and mediation of any grievances as a condition of employment.

Subsection (b) provides that any cost of arbitration or mediation shall be equally shared by the employer and H-2C worker, except that each party shall be responsible for the costs of their own counsel.

Subsection (c) defines the terms “condition of employment” and “H-2C worker.”

*Sec. 7. The Performance of Agricultural Labor or Services by Aliens Who Are Unlawfully Present.*

Subsection (a) of section 7 requires the Secretary of Homeland Security to waive certain grounds of inadmissibility and deportability with respect to certain illegal entrants and immigration violators, aliens not in possession of valid documents, and aliens unlawfully present solely for the purpose of allowing such aliens to work in agricultural jobs as defined by this Act. It also provides that such aliens must remain outside the United States for a period of time before they may be issued visas or provided status as H-2C workers.

Subsection (b) limits the class of aliens eligible for such waivers to those who were both physically present in the United States on April 25, 2013, and who performed agricultural labor or services in the United States for at least 575 hours or 100 days during the 2-year period ending on the date of enactment of this Act.

*Sec. 8. Eligibility for Federal Public Benefits and Refundable Tax Credits.*

Subsection (a) provides that H-2C workers are not eligible for Federal public benefits, including subsidies under the Patient Protection and Affordable Care Act.

Subsection (b) provides that H-2C workers are not eligible for refundable tax credits such as the Earned Income Tax Credit and the Child Tax Credit.

*Sec. 9. Effective Dates; Sunset; Regulations.*

Subsection (a) provides that the amendments made by sections 2 and 4 through 6, and subsections (a) and (c) through (f) of section 3, shall take effect 2 years after enactment of this Act. At that time the Secretary of Agriculture shall accept petitions to import H-2C workers; that the amendment made by section 3(b) of this Act shall take effect on the date that it becomes unlawful for any person or entity to hire or recruit for employment an individual without participating in the E-Verify Program or a similar program and only when the program indicates to employers whether a worker can work in agriculture pursuant to the H-2C program or in all jobs; and that section 7 of this Act shall take effect on the date of enactment of this Act and shall cease to be in effect on the date that is 2 years after the date of enactment of this Act.

Subsection (b) provides that the H-2A regulations published in 2008 by the Bush Administration shall be in force for all petitions approved under the H-2C program beginning on the date of enactment of this Act. This provision represents a clerical error. The reference should be to petitions approved under the H-2A program. Subsection (b) also provides that notwithstanding any other provision of law, an alien unlawfully present on the date of enactment of this Act may adjust status to that of an H-2A worker beginning on the date of enactment of this Act and ending 2 years after the date of enactment; and that 2 years after the date of enactment no new petitions to import H-2A workers may be accepted.

Subsection (c) requires the Secretary of Agriculture to promulgate regulations to implement the Secretary's duties under this Act not later than 18 months after the date of the enactment.

**Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**IMMIGRATION AND NATIONALITY ACT**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act".

TABLE OF CONTENTS

*	*	*	*	*	*	*
TITLE II—IMMIGRATION						
*	*	*	*	*	*	*
CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS						
*	*	*	*	*	*	*

*Sec. 218A. Admission of temporary H-2C workers.*

*Sec. 218B. At-will employment of temporary H-2C workers.*

## TITLE I—GENERAL

### DEFINITIONS

#### SECTION 101. (a) As used in this Act—

(1) \* \* \*

\* \* \* \* \*

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) \* \* \*

\* \* \* \* \*

(H) an alien (i) (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical

profession[; or (iii)], or (c) *having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join [him;] him, except that no spouse or child may be admitted under clause (ii)(c);*

\* \* \* \* \*

(53) *The term “agricultural labor or services” has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities.*

\* \* \* \* \*

## TITLE II—IMMIGRATION

\* \* \* \* \*

### CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

\* \* \* \* \*

#### GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) \* \* \*

\* \* \* \* \*

(9) ALIENS PREVIOUSLY REMOVED.—

(A) \* \* \*

(B) ALIENS UNLAWFULLY PRESENT.—

(i) \* \* \*

\* \* \* \* \*

(v) WAIVER.—[The Attorney General]

(I) *IN GENERAL.*—*The Secretary of Homeland Security has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an*

alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Attorney General] *Secretary of Homeland Security* that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Attorney General] *Secretary of Homeland Security* regarding a waiver under this clause.

(II) *H-2C WORKERS.*—*The Secretary of Homeland Security shall waive clause (i) solely if necessary to allow an alien to come temporarily to the United States to perform agricultural labor or services as provided in section 101(a)(15)(H)(ii)(c), except to the extent that the alien's unlawful presence followed after the alien's having the status of a nonimmigrant under such section.*

\* \* \* \* \*

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) *and section 218A* in the case of an employee of—

(A) \* \* \*

\* \* \* \* \*

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

\* \* \* \* \*

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) *and section 218A* shall be 100 percent of the wage determined pursuant to those sections.

\* \* \* \* \*

#### ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) \* \* \*

\* \* \* \* \*

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 101(a)(15)(H)(i)(b), may not exceed—

(i) \* \* \*

\* \* \* \* \*

(vii) 65,000 in each succeeding fiscal year; [or]

(B) under section 101(a)(15)(H)(ii)(b) may not exceed 66,000[.]; or

(C) under section 101(a)(15)(H)(ii)(c) may not exceed 500,000, *except that—*

(i) *the Secretary of Agriculture may decrease such number based on—*

(I) a shortage or surplus of workers performing agricultural labor or services;

(II) growth or contraction in the United States agricultural industry that has increased or decreased the demand for workers to perform agricultural labor or services;

(III) the level of unemployment and underemployment of United States workers (as defined in section 218A(a)(8)) in agricultural labor or services;

(IV) the number of nonimmigrant workers employers sought during the preceding fiscal year pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii);

(V) the number of H-2C workers (as defined in section 218A(a)(5)) who in the preceding fiscal year had to depart from the United States or be subject to removal under section 237(a)(1)(C)(i) because they could not find additional at-will employment within 30 days pursuant to section 218B;

(VI) the estimated number of United States workers (as defined in section 218A(a)(8)) who worked in agriculture during the preceding fiscal year pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii); and

(VII) the number of nonimmigrant agricultural workers issued a visa or otherwise provided nonimmigrant status pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii) during preceding fiscal years who remain in the United States out of compliance with the terms of their status;

(ii) during any fiscal year, the Secretary of Agriculture may increase such number on an emergency basis for severe shortages of agricultural labor or services; and

(iii) this numerical limitation shall not apply to any alien who performed agricultural labor or services in the United States for not fewer than 575 hours, or 100 days in which the alien was employed 5.75 or more hours per day, pursuant to section 7 of the AG Act during the 2-year period beginning on the date of the enactment of such Act and ending on the date that is 2 years after such date.

\* \* \* \* \*

#### **SEC. 218A. ADMISSION OF TEMPORARY H-2C WORKERS.**

(a) **DEFINITIONS.**—In this section and section 218B:

(1) **AREA OF EMPLOYMENT.**—The term “area of employment” means the area within normal commuting distance of the work-site or physical location where the work of the H-2C worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.

(2) **DISPLACE.**—The term “displace” means to lay off a worker from a job that is essentially equivalent to the job for which an H-2C worker is sought. A job shall not be considered to be “essentially equivalent” to another job unless the job—

(A) involves essentially the same responsibilities as such other job;

(B) was held by a United States worker with substantially equivalent qualifications and experience; and

(C) is located in the same area of employment as the other job.

(3) *ELIGIBLE INDIVIDUAL*.—The term “eligible individual” means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment of the individual.

(4) *EMPLOYER*.—The term “employer” means an employer who hires workers to perform agricultural employment.

(5) *H-2C WORKER*.—The term “H-2C worker” means a non-immigrant described in section 101(a)(15)(H)(ii)(c).

(6) *LAY OFF*.—

(A) *IN GENERAL*.—The term “lay off”—

(i) means to cause a worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) of subsection (b)); and

(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (b)(7), with either employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(B) *CONSTRUCTION*.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(7) *PREVAILING WAGE*.—The term “prevailing wage” means the wage rate paid to workers in the same occupation in the area of employment as computed pursuant to section 212(p).

(8) *UNITED STATES WORKER*.—The term “United States worker” means any worker who is—

(A) a citizen or national of the United States; or

(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

(b) *PETITION*.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H-2C worker shall file with the Secretary of Agriculture a petition attesting to the following:

(1) *TEMPORARY WORK OR SERVICES*.—

(A) *IN GENERAL*.—The employer is seeking to employ a specific number of agricultural workers on a temporary basis and will provide compensation to such workers at a specified wage rate.

(B) *DEFINITION.*—For purposes of this paragraph, a worker is employed on a temporary basis if the employer intends to employ the worker for no longer than 18 months (except for shepherders) during any contract period.

(2) *BENEFITS, WAGES, AND WORKING CONDITIONS.*—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (k) to all workers employed in the jobs for which the H-2C worker is sought and to all other temporary workers in the same occupation at the place of employment.

(3) *NONDISPLACEMENT OF UNITED STATES WORKERS.*—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment of the H-2C worker and during the 30-day period immediately preceding such period of employment in the occupation at the place of employment for which the employer seeks approval to employ H-2C workers.

(4) *RECRUITMENT.*—

(A) *IN GENERAL.*—The employer—

(i) conducted adequate recruitment in the area of intended employment before filing the attestation; and

(ii) was unsuccessful in locating a qualified United States worker for the job opportunity for which the H-2C worker is sought.

(B) *OTHER REQUIREMENTS.*—The recruitment requirement under subparagraph (A) is satisfied if the employer places a local job order with the State workforce agency serving the local area where the work will be performed, except that nothing in this subparagraph shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after receipt using the employment statistics system authorized under section 15 of the Wagner-Peyser Act (29 U.S.C. 491-2). The Secretary of Labor shall include links to the official Web sites of all State workforce agencies on a single webpage of the official Web site of the Department of Labor.

(C) *END OF RECRUITMENT REQUIREMENT.*—The requirement to recruit United States workers shall terminate on the first day that work begins for the H-2C worker.

(5) *OFFERS TO UNITED STATES WORKERS.*—The employer has offered or will offer the job for which the H-2C worker is sought to any eligible United States worker who—

(A) applies;

(B) is qualified for the job; and

(C) will be available at the time and place of need.

This requirement shall not apply to a United States worker who applies for the job on or after the first day that work begins for the H-2C worker.

(6) *PROVISION OF INSURANCE.*—If the job for which the H-2C worker is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker unless State law provides otherwise, insurance covering injury and disease arising out of, and in the course of, the worker's

*employment, which will provide benefits at least equal to those provided under the State workers compensation law for comparable employment.*

(7) *REQUIREMENTS FOR PLACEMENT OF H-2C WORKERS WITH OTHER EMPLOYERS.*—A nonimmigrant who is admitted into the United States as an H-2C worker may be transferred to another employer that has filed a petition under this subsection and is in compliance with this section.

(8) *STRIKE OR LOCKOUT.*—There is not a strike or lockout in the course of a labor dispute which, under regulations promulgated by the Secretary of Agriculture, precludes the hiring of H-2C workers.

(9) *PREVIOUS VIOLATIONS.*—The employer has not, during the previous two-year period, employed H-2C workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Agriculture after notice and opportunity for a hearing.

(c) *PUBLIC EXAMINATION.*—Not later than 1 working day after the date on which a petition under this section is filed, the employer shall make a copy of each such petition available for public examination, at the employer's principal place of business or worksite.

(d) *LIST.*—

(1) *IN GENERAL.*—The Secretary of Agriculture shall maintain a list of the petitions filed under subsection (b), which shall—

(A) be sorted by employer; and

(B) include the number of H-2C workers sought, the wage rate, the period of intended employment, and the date of need for each alien.

(2) *AVAILABILITY.*—The Secretary of Agriculture shall make the list available for public examination.

(e) *PETITIONING FOR ADMISSION.*—

(1) *CONSIDERATION OF PETITIONS.*—For petitions filed and considered under subsection (b)—

(A) the Secretary of Agriculture may not require such petition to be filed more than 28 calendar days before the first date the employer requires the labor or services of the H-2C worker;

(B) unless the Secretary of Agriculture determines that the petition is incomplete or obviously inaccurate, the Secretary, not later than 10 business days after the date on which such petition was filed, shall either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery; and

(C) if the Secretary determines that the petition is incomplete or obviously inaccurate, the Secretary shall—

(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

(ii) within 10 business days of receipt of the corrected petition, approve or deny the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.

(2) *PETITION AGREEMENTS.*—By filing an H-2C petition, a petitioner and each employer consents to allow access to the site where the labor is being performed to the Department of Agriculture and the Department of Homeland Security for the purpose of investigations to determine compliance with H-2C requirements and the immigration laws. Notwithstanding any other provision of law, the Departments of Agriculture and Homeland Security cannot delegate their compliance functions to other agencies or Departments.

(f) *ROLES OF AGRICULTURAL ASSOCIATIONS.*—

(1) *PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.*—A petition under subsection (b) to hire an alien as a temporary agricultural worker may be filed by an association of agricultural employers which use agricultural services.

(2) *TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.*—If an association is a joint employer of temporary agricultural workers, such workers may be transferred among its members to perform agricultural services of a temporary nature for which the petition was approved.

(3) *TREATMENT OF VIOLATIONS.*—

(A) *INDIVIDUAL MEMBER.*—If an individual member of a joint employer association violates any condition for approval with respect to the member's petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(9) and invoke penalties pursuant to subsection (i) against only that member of the association unless the Secretary of Agriculture determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

(B) *ASSOCIATION OF AGRICULTURAL EMPLOYERS.*—If an association representing agricultural employers as a joint employer violates any condition for approval with respect to the association's petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(9) and invoke penalties pursuant to subsection (i) against only the association and not any individual member of the association, unless the Secretary determines that the member participated in, had knowledge of, or had reason to know of the violation.

(g) *EXPEDITED ADMINISTRATIVE APPEALS.*—The Secretary of Agriculture shall promulgate regulations to provide for an expedited procedure—

(1) for the review of a denial of a petition under this section by the Secretary; or

(2) at the petitioner's request, for a de novo administrative hearing at which new evidence may be introduced.

(h) *MISCELLANEOUS PROVISIONS.*—

(1) *ENDORSEMENT OF DOCUMENTS.*—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of H-2C workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

(2) *FEES.*—

(A) *IN GENERAL.*—The Secretary of Agriculture shall require, as a condition of approving the petition, the payment

of a fee, in accordance with subparagraph (B), to recover the reasonable cost of processing petitions filed by employers or associations of employers seeking H-2C workers for jobs of a temporary or seasonal nature, but may not require the payment of such fees to recover the costs of processing petitions filed by employers or associations of employers seeking H-2C workers for jobs not of a temporary or seasonal nature.

(B) *FEE BY TYPE OF EMPLOYEE.*—

(i) *SINGLE EMPLOYER.*—An employer whose petition for temporary alien agricultural workers is approved shall, for each approved petition, pay a fee that—

(I) subject to subclause (II), is equal to \$100 plus \$10 for each approved H-2C worker; and

(II) does not exceed \$1,000.

(ii) *ASSOCIATION.*—Each employer-member of a joint employer association whose petition for H-2C workers is approved shall, for each such approved petition, pay a fee that—

(I) subject to subclause (II), is equal to \$100 plus \$10 for each approved H-2C worker; and

(II) does not exceed \$1,000.

(iii) *LIMITATION ON ASSOCIATION FEES.*—A joint employer association under clause (ii) shall not be charged a separate fee.

(C) *METHOD OF PAYMENT.*—The fees collected under this paragraph shall be paid by check or money order to the Department of Agriculture. In the case of employers of H-2C workers that are members of a joint employer association petitioning on their behalf, the aggregate fees for all employers of H-2C workers under the petition may be paid by 1 check or money order.

(i) *ENFORCEMENT.*—

(1) *INVESTIGATIONS AND AUDITS.*—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of the H-2C program. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigatory and auditing power.

(2) *FAILURE TO MEET CONDITIONS.*—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (b), or a material misrepresentation of fact in a petition under subsection (b), the Secretary—

(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

(B) may disqualify the employer from the employment of H-2C workers for a period of 1 year.

(3) *PENALTIES FOR WILLFUL FAILURE.*—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b), or

a willful misrepresentation of a material fact in a petition under subsection (b), the Secretary—

(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate;

(B) may disqualify the employer from the employment of H-2C workers for a period of 2 years;

(C) may, for a subsequent violation not arising out of the prior incident, disqualify the employer from the employment of H-2C workers for a period of 5 years; and

(D) may, for a subsequent violation not arising out of the prior incident, permanently disqualify the employer from the employment of H-2C workers.

(4) **PENALTIES FOR DISPLACEMENT OF UNITED STATES WORKERS.**—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in a petition under subsection (b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment of the H-2C worker or during the 30-day period preceding such period of employment, the Secretary—

(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed \$15,000 per violation) as the Secretary determines to be appropriate;

(B) may disqualify the employer from the employment of H-2C workers for a period of 5 years; and

(C) may, for a second violation, permanently disqualify the employer from the employment of H-2C workers.

(j) **FAILURE TO PAY WAGES OR REQUIRED BENEFITS.**—

(1) **ASSESSMENT.**—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, that the employer has failed to provide the benefits, wages, and working conditions attested by the employer under subsection (b), the Secretary shall assess payment of back wages, or such other required benefits, due any United States worker or H-2C worker employed by the employer in the specific employment in question.

(2) **AMOUNT.**—The back wages or other required benefits described in paragraph (1)—

(A) shall be equal to the difference between the amount that should have been paid and the amount that was paid to such worker; and

(B) shall be distributed to the worker to whom such wages or benefits are due.

(k) **MINIMUM WAGES, BENEFITS, AND WORKING CONDITIONS.**—

(1) **PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.**—

(A) **IN GENERAL.**—Each employer seeking to hire United States workers shall offer such workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2C workers. No job offer may impose on United States

workers any restrictions or obligations which will not be imposed on the employer's H-2C workers.

(B) *INTERPRETATION.*—Every interpretation and determination made under this section or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made so that—

(i) the services of workers to their employers and the employment opportunities afforded to workers by the employers, including those employment opportunities that require United States workers or H-2C workers to travel or relocate in order to accept or perform employment—

(I) mutually benefit such workers, as well as their families, and employers; and

(II) principally benefit neither employer nor employee; and

(ii) employment opportunities within the United States benefit the United States economy.

(2) *REQUIRED WAGES.*—

(A) *IN GENERAL.*—Each employer petitioning for workers under subsection (b) shall pay not less than the greater of—

(i) the prevailing wage level for the occupational classification in the area of employment; or

(ii) the applicable Federal, State, or local minimum wage, whichever is greatest.

(B) *SPECIAL RULE.*—An employer can utilize a piece rate or other alternative wage payment system as long as the employer guarantees each worker a wage rate that equals or exceeds the amount required under subparagraph (A).

(3) *EMPLOYMENT GUARANTEE.*—

(A) *IN GENERAL.*—

(i) *REQUIREMENT.*—Each employer petitioning for workers under subsection (b) shall guarantee to offer the worker employment for the hourly equivalent of not less than 50 percent of the work hours during the total anticipated period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer.

(ii) *FAILURE TO MEET GUARANTEE.*—If the employer affords the United States worker or the H-2C worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned if the worker had worked for the guaranteed number of hours.

(iii) *PERIOD OF EMPLOYMENT.*—For purposes of this subparagraph, the term “period of employment” means the total number of anticipated work hours and workdays described in the job offer and shall exclude the worker's Sabbath and Federal holidays.

(B) *CALCULATION OF HOURS.*—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

(C) *LIMITATION.*—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 50 percent guarantee described in subparagraph (A).

(D) *TERMINATION OF EMPLOYMENT.*—

(i) *IN GENERAL.*—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease, pest infestation, regulatory action, or any other reason beyond the control of the employer before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment.

(ii) *REQUIREMENTS.*—If a worker's employment is terminated under clause (i), the employer shall—

(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work day after the arrival of the worker and ending on the date on which such employment is terminated;

(II) make efforts to transfer the United States worker to other comparable employment acceptable to the worker; and

(III) not later than 24 hours after termination, notify (or have an association acting as an agent for the employer notify) the Secretary of Homeland Security of such termination.

(I) *PERIOD OF ADMISSION.*—

(1) *IN GENERAL.*—An H-2C worker shall be admitted for a period of employment, not to exceed 18 months (or 36 months as provided in subsection (o)(3)(A) for a worker employed in a job that is not of a temporary or seasonal nature), and except for shepherders, that includes—

(A) a period of not more than 7 days prior to the beginning of the period of employment for the purpose of travel to the work site; and

(B) a period of not more than 14 days following the period of employment for the purpose of departure or a period of not more than 30 days following the period of employment for the purpose of seeking a subsequent offer of employment by an employer pursuant to a petition under this section (or pursuant to at-will employment pursuant to section 218B during such time as that section is in effect). An H-2C worker who does not depart within these periods will

*be considered to have failed to maintain nonimmigrant status as an H-2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent offer of employment where the alien has not found at-will employment with a registered agricultural employer pursuant to section 218B or employment pursuant to this section.*

*(2) EMPLOYMENT LIMITATION.—An alien may not be employed during the 14-day period described in paragraph (1)(B) except in the employment for which the alien is otherwise authorized.*

*(m) ABANDONMENT OF EMPLOYMENT.—*

*(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(c) who abandons the employment which was the basis for such admission or status—*

*(A) shall have failed to maintain nonimmigrant status as an H-2C worker;*

*(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i); and*

*(C) shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the date of the abandonment of employment.*

*(2) REPORT BY EMPLOYER.—Not later than 24 hours after an employer learns of the abandonment of employment by an H-2C worker, the employer or association acting as an agent for the employer, shall notify the Secretary of Homeland Security of such abandonment.*

*(3) REMOVAL.—The Secretary of Homeland Security shall promptly remove from the United States any H-2C worker who violates any term or condition of the worker's nonimmigrant status.*

*(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien's employment if the alien promptly departs the United States upon termination of such employment. An alien who voluntarily terminates the alien's employment and who does not depart within 14 days shall be considered to have failed to maintain nonimmigrant status as an H-2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the voluntary termination of employment.*

*(n) REPLACEMENT OF ALIEN.—An employer may designate an eligible alien to replace an H-2C worker who abandons employment notwithstanding the numerical limitation found in section 214(g)(1)(C).*

(o) *EXTENSION OF STAY OF H-2C WORKERS IN THE UNITED STATES.*—

(1) *EXTENSION OF STAY.*—If an employer seeks approval to employ an H-2C worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (b) shall request an extension of the alien's stay and, if applicable, a change in the alien's employment.

(2) *WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.*—

(A) *IN GENERAL.*—An alien who is lawfully present in the United States on the date of the filing of a petition to extend the stay of the alien may commence or continue the employment described in a petition under paragraph (1) until and unless the petition is denied. The employer shall provide a copy of the employer's petition for extension of stay to the alien. The alien shall keep the petition with the alien's identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

(B) *EMPLOYMENT ELIGIBILITY DOCUMENT.*—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

(C) *FILE DEFINED.*—In this paragraph, the term "file" means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivering by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition for an extension of stay.

(3) *LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.*—

(A) *MAXIMUM PERIOD.*—The maximum continuous period of authorized status as an H-2C worker (including any extensions) is 18 months for a worker employed in a job that is of a temporary or seasonal nature. For an H-2C worker employed in a job that is not of a temporary or seasonal nature, the initial maximum continuous period of authorized status is 36 months and subsequent maximum continuous periods of authorized status are 18 months. There is no maximum continuous period of authorized status for a shepherd or for an H-2C worker who returns to the worker's permanent residence outside the United States each day.

(B) *REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.*—In the case of an alien outside the United States who was employed in a job of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H-2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H-2C worker unless the alien has remained outside the United States for a continuous period equal to at least  $\frac{1}{6}$  the duration of the alien's previous period of authorized status as an H-2C worker. For an alien

*outside the United States who was employed in a job not of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H-2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H-2C worker unless the alien has remained outside the United States for a continuous period equal to at least the lesser of  $\frac{1}{6}$  the duration of the alien's previous period of authorized status as an H-2C worker or 3 months. There is no requirement to remain outside the United States for a sheepherder or for an H-2C worker who returns to the worker's permanent residence outside the United States each day.*

(p) *ADJUSTMENT OF STATUS.*—Notwithstanding any other provision of law, an alien who is unlawfully present in the United States on April 25, 2013, is eligible to adjust status to that of an H-2C worker.

(q) *TRUST FUND TO ASSURE WORKER RETURN.*—

(1) *ESTABLISHMENT.*—There is established in the Treasury of the United States a trust fund (in this section referred to as the “Trust Fund”) for the purpose of providing a monetary incentive for H-2C workers to return to their country of origin upon expiration of their visas.

(2) *WITHHOLDING OF WAGES; PAYMENT INTO THE TRUST FUND.*—

(A) *IN GENERAL.*—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), all employers of H-2C workers shall withhold from the wages of the workers an amount equivalent to 10 percent of the wages of each worker and pay such withheld amount into the Trust Fund.

(B) *JOBS THAT ARE NOT OF A TEMPORARY OR SEASONAL NATURE.*—Employers of H-2C workers employed in jobs that are not of a temporary or seasonal nature shall pay into the Trust Fund an amount equivalent to the Federal tax on the wages paid to H-2C workers that the employer would be obligated to pay under chapters 21 and 23 of the Internal Revenue Code of 1986 had the H-2C workers been subject to such chapters.

*Amounts withheld under this paragraph shall be maintained in such interest bearing account with such a financial institution as the Secretary of Agriculture shall specify.*

(3) *DISTRIBUTION OF FUNDS.*—Amounts paid into the Trust Fund on behalf of an H-2C worker, and held pursuant to paragraph (2)(A) and interest earned thereon, shall be paid by the Secretary of State to the worker if—

(A) *the worker applies to the Secretary of State (or the designee of such Secretary) for payment within 120 days of the expiration of the alien's last authorized stay in the United States as an H-2C worker at a United States embassy or consulate in the worker's home country;*

(B) *in such application the worker establishes that the worker has complied with the terms and conditions of the H-2C program; and*

(C) in connection with the application, the H-2C worker confirms their identity.

(4) *ADMINISTRATIVE EXPENSES.*—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(B), and interest earned thereon, shall be paid to the Secretary of State, the Secretary of Agriculture, and the Secretary of Homeland Security in amounts equivalent to the expenses incurred by such officials in the administration of the H-2C program not reimbursed pursuant to subsection (h)(2) or section 218B(b).

(5) *LAW ENFORCEMENT.*—Notwithstanding any other provision of law, amounts paid into the Trust Fund under paragraph (2), and interest earned thereon, that are not needed to carry out paragraphs (3) and (4) shall, to the extent provided in advance in appropriations Acts, be made available until expended without fiscal year limitation to the Secretary of Homeland Security to apprehend, detain, and remove aliens unlawfully present in the United States.

(r) *INVESTMENT OF TRUST FUND.*—

(1) *IN GENERAL.*—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the price; or

(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest of such special obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(2) *SALE OF OBLIGATION.*—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(3) *CREDITS TO TRUST FUND.*—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(4) *REPORT TO CONGRESS.*—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.

(s) *AUDIT OF TRUST FUND.*—The Secretary of Homeland Security annually shall audit the Trust Fund.

**SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H-2C WORKERS.**

(a) *AT-WILL EMPLOYMENT.*—

(1) *IN GENERAL.*—An H-2C worker may perform agricultural labor or services for any employer that is designated as a “registered agricultural employer” pursuant to subsection (b). However, an H-2C worker may only perform labor or services pursuant to this section if the worker is already lawfully present in the United States as an H-2C worker, having been admitted or otherwise provided nonimmigrant status pursuant to section 218A, and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i). An H-2C worker who abandons the employment which was the basis for admission or status pursuant to section 218A may not perform labor or services pursuant to this section until the worker has returned to their home country, been readmitted as an H-2C worker pursuant to section 218A and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i).

(2) *PERIOD OF STAY.*—An H-2C worker performing such labor or services for a registered agricultural employer is subject to the period of admission, limitation of stay in status, and requirement to remain outside the United States contained in subsections (l) and (o)(3) of section 218A.

(3) *TERMINATION OF EMPLOYMENT.*—At the conclusion of at-will employment with a registered agricultural employer or the conclusion of employment pursuant to section 218A qualifying an H-2C worker to perform at-will work pursuant to this section, an H-2C worker shall find at-will employment with a registered agricultural employer or employment pursuant to section 218A within 30 days or will be considered to have failed to maintain nonimmigrant status as an H-2C worker and shall depart from the United States or be subject to removal under section 237(a)(1)(C)(i). An H-2C worker who does not so depart shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 31st day after conclusion of employment where the alien has not found at-will employment with a registered agricultural employer or employment pursuant to section 218A. However, an alien may voluntarily terminate the alien’s employment if the alien promptly departs the United States upon ter-

mination of such employment. Either a registered agricultural employer or an H-2C worker may voluntarily terminate the worker's at-will employment at any time. The H-2C worker then shall find additional at-will employment with a registered agricultural employer or employment pursuant to section 218A within 30 days or will be considered to have failed to maintain nonimmigrant status as an H-2C worker and shall depart from the United States or be subject to removal under section 237(a)(1)(C)(i). An H-2C worker who does not so depart shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 31st day after conclusion of employment where the alien has not found at-will employment with a registered agricultural employer or employment pursuant to section 218A.

(b) REGISTERED AGRICULTURAL EMPLOYERS.—The Secretary of Agriculture shall establish a process to accept and adjudicate applications by employers to be designated as registered agricultural employers. The Secretary shall require, as a condition of approving the petition, the payment of a fee to recover the reasonable cost of processing the application. The Secretary shall designate an employer as a registered agricultural employer if the Secretary determines that the employer—

(1) employs individuals who perform agricultural labor or services;

(2) has not been subject to debarment from receiving future temporary agricultural labor certifications pursuant to section 101(a)(15)(H)(ii)(a) within the last five years;

(3) has not been subject to disqualification from the employment of H-2C workers within the last five years;

(4) agrees to, if employing an H-2C worker pursuant to this section, abide by the terms of the attestations contained in section 218A(b) and the obligations contained in subsections (k) (excluding paragraph (3) of such subsection) and (q) of section 218A as if it had submitted a petition making those attestations and accepting those obligations; and

(5) agrees to notify the Secretary of Agriculture and the Secretary of Homeland Security each time it employs an H-2C worker pursuant to this section within 24 hours of the commencement of employment and each time an H-2C worker ceases employment within 24 hours of the cessation of employment.

(c) LENGTH OF DESIGNATION.—An employer's designation as a registered agricultural employer shall be valid for 3 years, and the designation can be extended upon reapplication for additional 3-year terms. The Secretary shall revoke a designation before the expiration of its three year term if the employer is subject to disqualification from the employment of H-2C workers subsequent to being designated as a registered agricultural employer.

(d) ENFORCEMENT.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of this section. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigatory and audit power. The Secretary

of Agriculture's enforcement powers and an employer's liability described in subsections (i) through (j) of section 218A are applicable to employers employing H-2C workers pursuant to this section.

(e) *REMOVAL OF H-2C WORKER.*—The Secretary of Homeland Security shall promptly remove from the United States any H-2C worker who is or had been employed pursuant to this section on an at-will basis who is who violates any term or condition of the worker's nonimmigrant status.

\* \* \* \* \*

## MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

\* \* \* \* \*

### DEFINITIONS

SEC. 3. As used in this Act—

(1) \* \* \*

\* \* \* \* \*

(8)(A) \* \* \*

(B) The term “migrant agricultural worker” does not include—

(i) \* \* \*

(ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States **under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.** *under subclauses (a) and (c) of section 101(a)(15)(H)(ii), and section 214(c), of the Immigration and Nationality Act.*

\* \* \* \* \*

### Dissenting Views

By all accounts, the U.S. immigration system has been broken for decades. Nowhere is that more evident than in our agricultural sector. As a result of a diminishing supply of U.S. workers willing to perform migrant and seasonal manual labor, the sector has grown increasingly reliant on foreign workers to pick fruit and vegetables on America's farms. Without these foreign workers, many U.S. farms would go out of business, causing a devastating ripple effect across our Nation's economy. The resulting increased reliance on imported food would expand our trade deficit and make us even more dependent on foreign countries for the health and safety of our national food supply.

Despite these risks, the U.S. immigration system has failed to keep up with the demand for farmworker labor. America's agricultural sector now relies on more than a million undocumented farmworkers, representing over 50 percent of the on-the-farm workforce. This situation is untenable for both farmers and farmworkers, as a largely undocumented labor force threatens the stability of U.S. agriculture and makes workers significantly more vulnerable to abuse. Farmers and farmworkers provide an invaluable service to

our citizens, our economy, and our country, and they deserve a system that works.

Recognizing this need for a more structured and stable labor force, the United Farm Workers (UFW) and the Agriculture Workforce Coalition (AWC)—which includes nearly 70 organizations and associations representing agricultural employers across the country—reached an historic agreement on a proposed solution. This agreement, which came after months of negotiations, is designed to provide a system that works for both growers and farmworkers. It would allow the current one million experienced, but undocumented, farmworkers to earn permanent residency by making a commitment to work in the agricultural sector for the next five to 8 years. And future labor needs would be met with a new, modern temporary agricultural guestworker program, with provisions for both “at-will” workers and workers under contract.

The bipartisan Senate comprehensive immigration reform bill, S. 744, includes the agreement between the UFW and the AWC among its many reforms to overhaul the U.S. immigration system. That bill passed the Senate with strong bipartisan support on June 27, 2013. But the House Judiciary Committee has taken a very different approach. Instead of providing what this Nation desperately needs—namely, a comprehensive solution that provides holistic fixes to our broken immigration system—the Committee has pursued a piecemeal strategy of flawed bills that would only make the system worse. H.R. 1773, the “Agricultural Guestworker Act” or the “AG Act,” is such a bill.

H.R. 1773 creates a new H-2C temporary worker program that rivals the now-infamous Bracero program of the 1940’s, 50’s, and 60’s for its lack of protections for both foreign workers and the U.S. workers who work alongside them. The H-2C program would slash worker wages, eliminate critical housing and transportation requirements, and essentially prohibit workers from enforcing their contractual and other rights. This alone would seriously undermine the wages and working conditions of farmworkers, including the millions of U.S. workers who work in the sector. Moreover, rather than providing a pathway to earned residency to the undocumented farmworkers who are currently sustaining the agricultural sector, the bill establishes a “report to deport” program that would further destabilize the current workforce. The bill asks undocumented farmworkers to leave the country—to leave their homes and their families—in order to be eligible for the chance of returning as temporary guestworkers in the future. Those who later receive job offers from U.S. employers could return, but their H-2C temporary visas would forever be contingent on the employers they work for, with practically no legal protections, and only so long as they continue to work in agriculture.

These provisions, taken together, would convert an entire industry, from America’s farms to its packaging and processing plants, to an army of guestworkers. H.R. 1773 is one of the most regressive guestworker bills in decades, failing to address our broken immigration system and sending the message to hardworking farm laborers that they and their family members are not welcome to participate in the American Dream. The bill is thus strongly opposed by hundreds of national and regional organizations, including the UFW and other farmworker advocates, labor unions, immigrants’

rights organizations, and major religious institutions.<sup>1</sup> And unlike the agreement between the UFW and the AWC, H.R. 1773 lacks the support of the vast majority of agricultural employer organizations and associations across the country.

For these reasons, and those described below, we respectfully dissent and urge our colleagues to reject this dangerous and seriously flawed bill.

#### DESCRIPTION AND BACKGROUND

##### SUMMARY OF H.R. 1773

H.R. 1773 was introduced by Judiciary Committee Chairman Bob Goodlatte (R-VA) on April 26, 2013. It was originally introduced as a bipartisan measure with eight cosponsors, but the lone Democratic sponsor, Representative Collin Peterson (D-MN), withdrew his sponsorship of the bill on May 23, 2013. On May 16, 2013, the Committee on the Judiciary held a legislative hearing on the bill.<sup>2</sup>

H.R. 1773 establishes a new “H-2C” temporary agricultural guestworker program to replace the current H-2A temporary visa program that has been in existence since the passage of the Immigration Reform and Control Act of 1986. In comparison to the current H-2A program, the H-2C program would dramatically lower the wages required to be paid to temporary agricultural workers. For example, it would lower required wages in Edgefield County, SC from \$10.00 per hour under the Department of Labor’s “Adverse Effect Wage Rate” to \$8.06 per hour under the first level (“Level 1”) of the Department of Labor’s “prevailing wage” system. Wages for H-2C workers would additionally be lowered by the requirement that employers withhold 10 percent of workers’ wages for collection at overseas U.S. embassies upon their return to their home countries.

The H-2C program would further reduce farmworker incomes by eliminating or weakening other current H-2A protections, including those requiring employers to provide housing, transportation, and minimum work guarantees. The elimination of the housing requirement alone would reduce real wages by \$1.00 to \$2.00 per hour depending on the area of employment and the availability of inexpensive and suitable housing. Real wages would further be reduced as workers would no longer be able to seek reimbursement for transportation expenses. The replacement of the H-2A program’s “ $\frac{3}{4}$  work guarantee” with the H-2C program’s “ $\frac{1}{2}$  work guarantee” would result in workers receiving even less compensation when work opportunities are fewer than employers had originally promised. And the new H-2C program’s mediation and mandatory arbitration provisions would essentially eliminate the ability for workers to enforce their rights, including seeking and collecting inappropriately withheld back wages.

These reductions in worker protections are particularly severe considering that the H-2C program would provide 500,000 temporary visas (generally of 18-month duration) per year, and that

<sup>1</sup> See October 15, 2013 letter in opposition to H.R. 1773 signed by over 200 hundred national and regional organizations, available at [https://filemanager.capwiz.com/filemanager/file-mgr/nvgllc/6 Sign On Ltr Goodlatte Ag Act HR 1773.pdf](https://filemanager.capwiz.com/filemanager/file-mgr/nvgllc/6%20Sign%20On%20Ltr%20Goodlatte%20Ag%20Act%20HR%201773.pdf).

<sup>2</sup> Agricultural Guestworker Act: Hearing on H.R. 1773 Before the Subcomm. On Immigration and Border Security of the H. Comm. on the Judiciary, 113th Cong. (2013), available at [http://judiciary.house.gov/\\_files/hearings/printers/113th/113-12\\_80975.PDF](http://judiciary.house.gov/_files/hearings/printers/113th/113-12_80975.PDF).

H-2C workers would be entirely reliant on their employers for obtaining and sustaining their immigration status. Workers would be prohibited from entering the country on H-2C status without a job offer from a registered agricultural employer. Once in the country, H-2C workers would be required to maintain essentially continuous agricultural employment with registered employers to maintain their status. Although the bill contains certain provisions that purport to provide worker portability among registered employers, the fear of losing status would render H-2C workers particularly vulnerable.

The bill fails to provide any means for the estimated 1 to 1.25 million undocumented farmworkers (or their families) to earn a chance for permanent residency and eventual citizenship. Instead, the bill creates a “report to deport” program that requires current undocumented farmworkers to leave the country to obtain the chance of a temporary H-2C visa in the future. If such a worker receives a job offer from a registered employer in the months or years ahead, he or she would be eligible to return to the country, but only for 18 months or until the worker loses his or her job. After this period, the worker would again be required to leave the U.S. for a period of up to 3 months, and return to the U.S. would again be conditioned on a job offer from a registered employer. The bill provides no status of any kind for spouses or children of such workers.

As such, H.R. 1773 merely provides undocumented farmworkers the ability to trade one form of second-class status for another. Workers would remain fully dependent on their employers, as workers are not given any ability to seek permanent residency and become full members of the society they help to feed. The bill would also tear families apart as it fails to provide any opportunity for immediate family members to obtain immigration status. Consequently, many undocumented farmworkers would refrain from seeking H-2C status, leaving them in the same vulnerable position they are now in.

All told, H.R. 1773 offers fewer protections than the notoriously abusive Bracero program that brought millions of temporary farmworkers to the U.S. between 1942 and 1967. By slashing many of the protections in the current H-2A program, abuses in the new program will be amplified as new H-2C workers will be even more vulnerable to exploitation and will have extremely limited access to judicial relief and legal assistance. U.S. workers who are not displaced will face huge wage cuts and other reductions in working conditions given the bill’s failure to include protections for U.S. workers and temporary workers. These effects will be wide and far-reaching given the immense number of guestworkers who will be available each year, including in year-round, permanent jobs and in non-agricultural industries such as poultry and meat processing.

#### SECTION-BY-SECTION ANALYSIS

*Sec. 1. Short Title.* Section 1 sets forth the short title of the bill as the “Agricultural Guestworker Act” or “AG Act.”

*Sec. 2. H-2C Temporary Agricultural Work Visa Program.* Section 2(a) adds a new definition to section 101 of the Immigration and Nationality Act (INA) for the creation of H-2C status for tem-

porary workers who are “coming temporarily to the United States to perform agricultural labor or services.”

Section 2(b) expands the definition of agricultural labor or services to include “the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state)” and “all activities required for the preparation, processing or manufacturing of a product of agriculture for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities.”

*Sec. 3. Admission of Temporary H-2C Workers.* Section 3(a) creates new procedures for the admission of H-2C workers by adding a new section (section 218A) to the INA.

New section 218A(a) defines various terms, including area of employment, displace, eligible individual, employer, H-2C worker, lay off, prevailing wage, and U.S. worker.

New section 218A(b) requires an agricultural employer to submit a petition to the U.S. Department of Agriculture (USDA) attesting to the following:

1. The number of temporary H-2C workers it intends to employ and the wage rate at which it will pay such workers. (The term “temporary” is defined by the employer’s intent to hire the worker for no more than 18 months, except for shepherders).
2. That it will offer at least the same wages, benefits and working conditions to similarly-situated U.S. workers and to all other temporary workers in the same occupation.
3. That it will not displace U.S. workers during the H-2C period of employment or in the 30 days prior to employment, and that there is no strike or lockout occurring. For a displacement to occur, the job must be essentially equivalent and include the same responsibilities, be held by a U.S. worker with substantially equivalent qualifications and experience, and be located in same area of employment.
4. That it has complied with H-2C recruitment requirements, by having the State Workforce Agency post the job order on-line for 30 days and by offering the job to any U.S. applicant that applies and is qualified and available at time and place needed. Recruitment of U.S. workers is required until the first day the H-2C worker starts.
5. That it will provide Workers’ Compensation for H-2C workers.
6. That it has not knowingly violated a material term or condition of the program in the previous 2 years, as determined by Secretary of Agriculture.

New section 218A(c) requires the employer to make the petition publicly available at the employer’s principal place of business or worksite.

New section 218A(d) requires the Secretary of Agriculture to make a list of petitions publicly available.

New section 218A(e) provides that USDA may not require employers to petition more than 28 days before the start date. USDA

must process the petitions within 10 days and can only reject a petition if it is incomplete or obviously inaccurate. By filing a petition, employers consent to inspection by USDA and DHS. USDA and DHS may not delegate their enforcement authority (including to the Department of Labor).

New section 218A(f) provides that agricultural associations can file petitions for workers. If an association is acting as a joint employer, workers can be transferred among its members.

New section 218A(g) provides for an expedited appeals process for denied petitions.

New section 218A(h) requires that fees be assessed only against employers who are hiring workers for temporary or seasonal jobs, but not year-round jobs. The fee is the same as in current H-2A regulations (*i.e.*, \$100 plus \$10 per worker, with a maximum of \$1,000 no matter the size of the employer).

Subsections (i) and (j) authorize the USDA to conduct investigations and audits; contain penalty provisions, including fines not to exceed \$1000, or \$5000 for willful violations, and up to a 2-year bar from the program for willful violations; include penalties for displacing U.S. workers and failing to pay wages or required benefits; include language to address the Eleventh Circuit decision in *Arriaga v. Florida Pacific Farms*, 305 F.3d 1228 (11th Cir. 2002), by stating that transportation and relocation costs “mutually benefit” workers and employers contrary to current Fair Labor Standards Act (FLSA) case law, thereby allowing employers to transfer these costs to workers.

New section 218A(k)(1) requires that U.S. workers be provided the same wages, benefits and working conditions as those provided to H-2C workers and that no job offer may impose restrictions or obligations on U.S. workers that are not imposed on H-2C workers. New section 218A(k)(2) requires the employer petitioning for workers under section 218A(b) to pay not less than the greater of: (1) the prevailing wage level for the occupational classification in the area of employment; or (2) the applicable Federal, State, or local minimum wage, whichever is greatest. New section 218A(k)(3) requires that employers provide at least 50% of the hours promised to the worker and, if not, pay the equivalent.

New section 218A(l) sets the period of H-2C status at 18 months for temporary or seasonal work and 36 months for year-round work. Sheepherders and workers near the border (H-2C workers who return to the worker’s place of permanent residence outside the country each day) have no period of maximum stay. H-2C workers will have 14 days after the period of employment to leave the country, or 30 days if they are seeking another employment opportunity. If the worker stays 1 day over the authorized period, they are subject to removal and are barred from the U.S. for 3 years.

New section 218A(m) provides that an H-2C worker who quits his or her job must leave the country in 14 days or be banned from return to the U.S. for 3 years.

New section 218A(n) allows an employer to replace an H-2C worker who leaves his or her employment. The replacement worker will not count towards the cap.

New section 218A(o) requires the filing of a petition and the extension of visa status if an employer wants to hire an H-2C worker

already in the country. The worker cannot exceed the maximum period of stay: 18 months for temporary or seasonal jobs or 36 months for year-round jobs (with the exception of shepherders, who have no maximum period). After reaching the maximum period of stay, H-2C workers must remain outside the country for a continuous period equal to at least 1/6th of the alien's previous period of authorized status. For year-round jobs, the worker must remain outside the country for a continuous period that is the lesser of 3 months or 1/6th of the worker's previous period of authorized status. There is no requirement to remain outside the country for shepherders or for workers who cross the border each day.

New section 218A(p) allows immigrants who are unlawfully present on April 25, 2013, and who have performed agricultural labor in the U.S. for at least 575 hours, or 100 days, during the 2 years before enactment, to obtain a waiver of certain grounds of inadmissibility and become eligible for temporary H-2C status if they leave the country and later receive a job offer from a registered H-2C agricultural employer.

New section 218A(q) requires employers to deduct 10% from worker wages and place those withheld wages in a trust fund, even if it brings the worker below the Federal minimum wage; the bill creates an exemption from the FLSA for this purpose. To apply for the return of their earnings, H-2C workers would be required to travel to a U.S. consulate in their home country within 120 days of the expiration of their visa and demonstrate compliance with the terms of the H-2C program. For year-round jobs, employers must pay into the Trust Fund an amount equal to the Federal tax on wages paid to H-2C workers that the employer would have been obligated to pay under chapters 21 (FICA) and 23 (FUTA) of the Internal Revenue Code if the workers were subject to those chapters.

Section 3(b) adds a new provision to the INA (section 218B) concerning at-will employment of temporary H-2C workers.

New section 218B(a) allows H-2C workers to become at-will workers after finishing the first contract so long as they do not exceed their period of stay. They have 30 days to find new work, and they may only work for registered agricultural employers.

Subsections (b) and (c) of new section 218B require employers to: pay a processing fee; show that they employ agricultural workers; demonstrate that they have not been subject to debarment or disqualification from the H-2A or H-2C programs in the last 5 years; agree to the terms of the attestations for H-2C workers; and notify DHS when they first employ and cease to employ H-2C workers. Registration is valid for 3 years, with 3-year extensions.

New section 218B(d) includes identical enforcement provisions to those described above for section 218A.

New section 218B(e) requires DHS to remove any at-will worker that violates a material term or condition of the program.

Section 3(c) of the bill prohibits visas for spouses and children.

Section 3(d) provides for a cap of 500,000 H-2C visas per year. The cap does not apply to any alien (including undocumented workers) who worked for 100 days or 575 hours in the 2 years preceding the date of enactment (it is unclear whether this also includes H-2A temporary workers). The cap also excludes the replacement of

workers who abandon employment. The Secretary of Agriculture may decrease the cap in a given year based on:

1. a shortage or surplus of farmworkers;
2. growth or contraction in the agricultural industry that has increased or decreased the demand for workers;
3. the level of unemployment and underemployment of U.S. workers;
4. the number of nonimmigrant workers that employers sought during the preceding fiscal year;
5. the number of H-2C workers who had to leave in the preceding fiscal year because they could not find additional at-will employment within 30 days;
6. the estimated number of U.S. workers in agriculture; and
7. the number of nonimmigrant agricultural workers issued a visa during preceding fiscal years who remain in the U.S. out of compliance with the terms of their status.

During any fiscal year, the Secretary of Agriculture may also increase such number on an emergency basis for severe shortages of agricultural labor or services.

Section 3(e) provides for waivers of inadmissibility for undocumented agricultural workers to become H-2C workers.

Section 3(f) amends the definition of “prevailing wage” in the INA to apply to temporary H-2C workers, thus ensuring that H-2C employers may pay workers according to the four-tiered prevailing wage system used in the H-1B program. With respect to agricultural employment, use of the four-tiered wage system will likely result in crop workers (who will almost all be classified as Level 1 workers) being paid as low as \$8.06 per hour (the current Level 1 wage from Edgefield County, SC).

Section 3(g) makes technical amendments to the INA’s table of contents.

*Sec. 4. Mediation.* Section 4 provides that an H-2C worker may not bring a civil action for damages against an employer unless the worker seeks mediation through the Federal Mediation and Conciliation Service at least 90 days before filing the action.

*Sec. 5. Migrant and Seasonal Agricultural Worker Protection.* Section 5 provides that H-2C workers are not covered by the Migrant and Seasonal Agricultural Worker Protection Act, the main law protecting farmworkers.

*Sec. 6. Binding Arbitration.* Section 6 provides that at the time of employment, employers may require workers to submit to mandatory binding arbitration and mediation of any grievance relating to the employment relationship, the cost of which would be equally divided between the employer and the H-2C worker, except that they would each pay for their own counsel, if any.

*Sec. 7. The Performance of Agricultural Labor or Services by Aliens who Are Unlawfully Present.* Section 7 provides inadmissibility and deportability waivers for undocumented farmworkers who are physically present in the United States as of April 25, 2013, solely in order to allow them to perform agricultural work, if the undocumented farmworker: (1) was physically present in the United States on April 25, 2013; and (2) performed agricultural

labor or services in the U.S. for not fewer than 575 hours, or 100 days in which the alien was employed 5.75 or more hours per day, during the 2-year period ending on the date of enactment. Such workers would not be subject to the annual numerical cap. And during the 2-year period following enactment, such a worker would not be considered an unauthorized worker or unlawfully present under the immigration laws, so long as they are performing agricultural work.

*Sec. 8. Eligibility for Federal Public Benefits and Refundable Tax credits.* Section 8 excludes undocumented agricultural workers and H-2C workers from eligibility for subsidies under the Patient Protection and Affordable Care Act (ACA), as well as the Child Income Tax Credits and Earned Income Tax Credits. The section also excludes such workers from being subject to the individual health care mandate under the ACA.

*Sec. 9. Effective dates; Sunset; Regulations.* Section 9(a) sets forth various effective dates for the legislation. Most provisions become effective 2 years after the date of enactment. Section 3(b) (concerning at-will employees) would become effective only after an E-verify system is made mandatory and such system can: (1) specify whether individuals are authorized to work only in agriculture and (2) track the maximum continuous period of authorized status for workers and out-of-country requirements. The provision allowing for the performance of agricultural labor by undocumented immigrants becomes effective on the date of enactment and ceases to be effective 2 years after that.

Section 9(b) provides that the Bush H-2A regulations from 2008 will be in force for the H-2C program as of the date of enactment. It is unclear whether this is a technical error (*i.e.*, whether the authors actually intended for the 2008 Bush regulations to apply to the H-2A program, considering that the H-2C program will not likely take effect for several years). The H-2A program sunsets 2 years after date of enactment. During those 2 years, undocumented immigrants can participate in the H-2A program.

Section 9(c) requires the Secretary of Agriculture to issue regulations within 18 months of the date of enactment of this legislation.

#### CONCERNS WITH H.R. 1773

##### I. H.R. 1773 FAILS TO ADEQUATELY ADDRESS THE CURRENT UNDOCUMENTED AGRICULTURAL WORKFORCE

As noted previously, the U.S. agricultural industry currently relies on more than a million undocumented farmworkers, representing more than 50 percent of crop workers and farm laborers in the United States. In other words, the country now finds itself dependent on a large, unauthorized workforce to keep America's farms in business and produce a stable, domestic food supply. Many of these workers have been here for years, if not decades, and have developed crucial knowledge and skills critical to the continued viability of U.S. fruit and vegetable production. These workers cannot simply be replaced without significant cost to American growers and consumers. And changing economic and demographic conditions across North America have already depleted the traditional supply of low-skilled foreign workers eager to come and work on America's farms.

Failure to retain and adequately deal with the current undocumented workforce would thus mean the eventual collapse of U.S. agriculture. Without sufficient workers to pick the Nation's fruits and vegetables, U.S. crop losses will grow, along with the closure of thousands of American farms. Millions more acres of U.S. farmland would cease to operate as production continues to move overseas, further resulting in the essential off-shoring of millions of agricultural and related jobs. The U.S. Department of Agriculture reports that for every on-the-farm job there are about 3.1 "upstream" and "downstream" jobs—jobs that support, and are created by, the growing of agricultural products.<sup>3</sup> The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-the-farm jobs are eliminated or moved out of the country.

Due to the immense value of the current undocumented workforce to U.S. agriculture, farmer organizations and associations across the country recognize the need to create incentives for these workers to stay in the sector by allowing them to earn permanent legal status through additional agricultural labor. This is the central feature of the legislative agreement reached by the Agriculture Workforce Coalition (AWC) and the United Farm Workers (UFW) that has been incorporated into the bipartisan Senate comprehensive immigration reform bill—S. 744. And it builds on years of similar proposals, including the former Agricultural Job Opportunities, Benefits, and Security Act (AgJOBS) that enjoyed wide bipartisan support for over a decade in both houses of Congress.

In contrast to these proposals, H.R. 1773 provides no opportunity for undocumented farmworkers to obtain permanent legal status of any kind, let alone permanent residency or U.S. citizenship. With respect to such workers, the bill provides only one option—the possibility of becoming temporary workers in the new H-2C agricultural temporary worker program created by the bill. As introduced, the bill would have made undocumented farmworkers eligible for temporary H-2C visas, contingent on the filing of a petition and extension of a job offer by a registered H-2C employer. Assuming such a visa was granted, the worker would generally have status for 18 months, after which he or she would be required to depart the United States with no guaranteed ability to return. After up to 3 months outside the country, the worker would again be eligible for H-2C status, but that status would again be contingent on an employer extending a job offer and filing a petition on behalf of the worker. Furthermore, no visa status would be made available to such a farmworker's spouse or minor children, even if they had lived in the U.S. for years or decades.

At the markup, Democratic Members of the Committee repeatedly described this as an eventual "report to deport" program that would further destabilize agriculture, punish farmworkers, and tear farmworkers' families apart. In this respect, however, the bill became even more restrictive during the Committee markup. The manager's amendment sponsored by the Committee Chairman amended the bill to further require undocumented farmworkers to leave the country *before* they could become eligible for H-2C visa

<sup>3</sup>Testimony of James Holt, Committee on Agriculture, U.S. House of Representatives, at 5 (Oct. 4, 2007) (testimony on file with Immigration Subcommittee, Minority Staff).

status. Adopted by a party-line vote of 17 to 15 (with all Republicans voting in favor and all Democrats voting against), the manager's amendment stripped the bill of even the meager ability for undocumented farmworkers to obtain H-2C status while in the United States. Instead, such workers would first be required to leave the country—including their homes and families—for the mere possibility of obtaining a temporary H-2C visa. The amendment thus turned an eventual “report to deport” program into an immediate one.

At the markup, Democratic Members of the Committee roundly criticized this proposal, noting that it would further destabilize the agricultural sector, that it was cruel to farm-working families, and that it would lead to further exploitation and abuse of farmworkers.

*A. H.R. 1773's “Report-to-Deport” Scheme would Further Destabilize U.S. Agriculture.*

As noted previously, the 1.2 to 1.25 million undocumented farmworkers in the country are critical to the success and livelihood of American farmers. H.R. 1773's requirement that these workers depart the country en masse, and with no guaranteed right of return, would cost American farmers their most experienced workers and further undermine the agricultural labor force. This, in turn, would severely impact planting and harvesting seasons throughout the country, leading to further crop loss and drastic reductions in agricultural output.

The bill's requirement that H-2C workers re-depart the U.S. every 18 months, and remain outside the country for at least 3 months in most cases, would only make matters worse. These repeated touchback requirements would further destabilize the workforce that is the backbone of the agricultural sector, resulting in increased losses for the U.S. economy. As stated in a letter to the Judiciary Committee from the Agricultural Workforce Coalition, the U.S. agricultural sector already faces a labor shortage that makes “our farms and ranches less competitive and that threatens the abundant, safe and affordable food supply American consumers enjoy.”<sup>4</sup> As initial and repeated touchback requirements would likely worsen such shortages, especially among the most experienced farmworkers, they would be “extremely disruptive to business practices” in the agricultural sector.<sup>5</sup>

*B. H.R. 1773's “Report-to-Deport” Scheme Is Cruel to Undocumented Farmworkers and their Families.*

The Nation's current experienced—but undocumented—workforce includes many workers with years of ties to their communities and deep family relationships, including to U.S. citizens and lawful permanent residents. Considering the extremely difficult work they do to put food on our tables and maintain the viability of U.S. agriculture, these farmworkers deserve a chance to earn permanent status so they can better take care of their families, contribute to their communities, and improve productivity in the agricultural

<sup>4</sup> Statement of the Agricultural Workforce Coalition to the House Committee on the Judiciary, Subcommittee on Immigration and Border Security, May 16, 2013 (statement on file with Immigration Subcommittee, Minority Staff).

<sup>5</sup> *Id.*

sector. The agreement between the AWC and the UFW recognizes the importance of these goals and thus provides the opportunity for undocumented farmworkers to earn permanent residency through continued agricultural employment.

H.R. 1773, however, asks these same farmworkers to depart the United States and leave their homes and loved ones, without the promise of return, for the mere chance of obtaining temporary H-2C status. Although the bill does make such farmworkers technically eligible for H-2C visas upon departure, that status is entirely dependent on an employer extending a job offer and filing a petition on behalf of the worker. And even after obtaining H-2C status, the worker would remain dependent on his or her employer(s) for maintaining and reacquiring the status on a continual, but indefinite, basis. Further, the bill makes no provision for the family members of H-2C workers, many of whom will have undocumented spouses and children in the United States. Thus even if an undocumented farmworker opted to obtain temporary H-2C status, the bill would provide the worker no ability to provide legal status to his immediate family, thus leading to further family separation. In short, H.R. 1773 sends the message to undocumented farmworkers that while the country needs their labor, they and their families are not welcome to share in the American Dream.

*C. H.R. 1773's Touchback Requirements Would Further Undermine Farmworker's Wages and Working Conditions.*

Farmworkers, whether documented or undocumented, are already among the most underpaid, vulnerable, and exploited workers in the nation. H.R. 1773 would only make matters worse by creating a temporary worker program with repeated touchback requirements and without a way for workers to independently earn permanent residency. By making immigration status permanently contingent on the extension of job offers and employment by registered employers, the bill further shifts the power balance in the employer's favor, thus making H-2C workers and other farmworkers even more vulnerable to exploitation and abuse.

Workers who depend on employers for their immigration status are far less likely to challenge abusive or otherwise inappropriate conduct, including dangerous and illegal workplace practices. Many temporary workers come to the U.S. with high debts due to labor contracting charges and other fees associated with obtaining temporary visas. Most come here to provide for themselves and their families. Whatever the case, temporary workers are often desperate to remain in the good graces of their employers in order to ensure the retention of the very immigration status that allows them to pay their debts and provide for their families. Those workers know that speaking out against an abusive or otherwise illegal practice will likely result in the termination of employment and the loss of immigration status. This fear creates an atmosphere in which wage theft and other violations of employment laws are tolerated, thus leading to lower wages and working conditions across the sector.

II. H.R. 1773 CREATES A NEW TEMPORARY WORKER PROGRAM THAT WOULD SEVERELY UNDERMINE FARMWORKER WAGES AND WORKING CONDITIONS

The balanced compromise that was reached between agribusiness and the UFW and included in the S. 744, is supported by farmers in every sector of the agricultural industry and in every corner of the United States. It is a carefully-crafted compromise that won the support of industry and workers alike. The compromise recognizes the importance of creating new and streamlined temporary worker programs that are more effective and easier for farmers to use. But it also recognizes the importance of protecting both U.S. and foreign farmworkers, including the wages and working conditions on America's farms.

In the compromise, the UFW made major concessions when it agreed to replace the current H-2A agricultural worker program with two new temporary worker programs. These concessions include: a significant reduction in the wages required to be paid to temporary farmworkers; allowing farmers to provide a housing allowance instead of providing actual housing; the easing of transportation requirements; the essentially complete elimination of recruitment requirements; and the streamlining of procedures for employers to hire temporary workers. These concessions were sufficient to obtain the strong widespread support within the agricultural industry.

H.R. 1773 disregards the compromise that is supported by industry groups and worker advocates and instead eliminates or weakens longstanding protections for U.S. and temporary farmworkers, additionally undermining the wages and working conditions on America's farms. The bill, for example, would significantly reduce the already-low incomes of farmworkers by drastically cutting wages, eliminating housing and transportation requirements, reducing minimum work guarantees, and requiring the withholding of 10 percent of workers' wages for indefinite periods. The bill would also impose mediation and arbitration requirements that would effectively eliminate the ability of farmworkers to seek legal assistance and obtain judicial relief. By slashing virtually all of the protections in the current H-2A program, which is already rife with exploitative situations, abuses in the new H-2C program will grow exponentially. And, over time, the lack of protections will result in wage cuts and deteriorating working conditions for all farmworkers, including U.S. workers now working in America's fields.

A. *H.R. 1773 Would Drastically Reduce Already-Low Farmworker Incomes.*

The H-2C temporary worker program created by H.R. 1773 would have a disastrous effect on the wages of both U.S. and temporary farmworkers. Considering the seasonal and intermittent nature of farmwork, crop pickers and farm laborers are already among the lowest paid workers in the United States. Yet H.R. 1773 would replace the "Adverse Effect Wage Rate" (AEWR) currently used in the H-2A program with a four-level "prevailing wage" system in the new H-2C program that would likely lower farmworker wages by roughly \$2.00 per hour. For example, the Department of Labor's AEWR system now sets the wage rate for farmworkers in

South Carolina at \$10.00 per hour. That is the minimum wage that is currently required of agricultural employers in South Carolina using the existing H-2A program. The H-2C program created by H.R. 1773 would instead use the Department of Labor's prevailing wage system, which currently sets the "Level 1" prevailing wage rate for crop workers and other farm laborers in Edgefield County, SC at \$8.06 per hour.<sup>6</sup>

The bill would further reduce farmworker incomes by eliminating the longstanding requirement that farmers provide adequate housing to migrant and seasonal farmworkers. Although the agreement between the AWC and the UFW would allow farmers to provide a housing allowance rather than actual housing, H.R. 1773 would strike the requirement altogether, thus allowing farmers to provide nothing at all. This would result in the effective reduction of farmworker wages by another \$1.00 to \$2.00 per hour, depending on average housing costs in the area of employment. Additionally, the elimination of the housing requirement would lead to dangerous living conditions for temporary farmworkers, especially in rural communities where affordable temporary housing is limited.

H.R. 1773 would further reduce farmworker incomes by eliminating the longstanding requirements that employers provide, or reimburse workers for, transportation to and from the U.S. and to and from the work site on a daily basis. Depending on transportation costs to and from a worker's home country, this would reduce the worker's real wages by a few hundred to almost one thousand dollars, as the farmworker would now be responsible for his or her own transportation. And workers would additionally have to bear the cost of transporting themselves to and from the work site on an almost daily basis if farmers choose to no longer provide such transportation under the new H-2C program.

H.R. 1773 would undermine farmworker incomes even further by cutting the minimum work guarantee that ensures employers do not petition for more workers than they actually need. The existing H-2A program requires a  $\frac{3}{4}$  work guarantee in which employers must provide workers at least three-quarters of the number of hours promised in the job offer (or pay the worker the difference if such hours cannot be provided). The H-2C program in H.R. 1773 would cut this work guarantee so that employers would only be required to provide workers half of the number of hours promised in the job offer (or pay the difference). This provision is unfair to workers who leave their families and incur large up-front costs to come to the U.S., only to find that there is insufficient work and that they cannot earn what had been promised to them.

Finally, H.R. 1773 would require employers to withhold 10 percent of farmworkers' already-drastically reduced incomes to incentivize their return to their home countries after completing their employment in the United States. Although the withheld income would be returned to the worker upon application at a U.S. consulate in the home country, the initial deprivation of the funds will likely reduce a worker's real wages below the Federal minimum wage level, especially considering that the worker is no longer entitled to reimbursement for housing and transportation

<sup>6</sup>By comparison, the agreement between the AWC and the UFW provides a minimum of \$9.64 per hour for crop workers and other farm laborers.

costs. This further reduction in farmworker income would leave farmworkers in an even more vulnerable position, increasing the possibility of exploitation and abuse.

The combination of the above provisions would drastically reduce worker wages and lead to significant job losses for U.S. citizens and lawful permanent residents currently engaged in agricultural employment. Under the new H-2C program, employers across the country will have immediate access to 500,000 temporary workers at far-below-market wages. And because workers would generally be given 18-month visas, the numbers of temporary workers in the U.S. would compound as additional 500,000 visa allotments are made available every year. The presence of so many low-paid workers would quickly displace U.S. farmworkers, and those who remain in the fields would see substantial wage cuts and deteriorating working conditions. This effect would be felt in areas far outside of traditional agriculture, as the bill's H-2C program expands the definition of agriculture to include year-round, permanent jobs in industries such as dairy and poultry and meat processing.

*B. H.R. 1773 Would Deprive Farmworkers of the Ability to Enforce Wage and Worker Protections.*

Under the current H-2A agricultural worker program, and even under the old Bracero program, temporary farmworkers could enforce their rights, including collecting back wages if they were inappropriately underpaid, in state and Federal courts. Nevertheless, H.R. 1773 would prevent access to courts for enforcement of contract terms unless the employee first attempts to mediate the claim through the Federal Mediation and Conciliation Service at least 90 days before filing the action. The bill additionally restricts farmworker access to justice by authorizing registered H-2C employers to require workers to submit to mandatory binding arbitration as a condition of employment. In such cases, any attempt to collect back wages or otherwise enforce contractual rights would require the worker to pay half of the arbitration costs, including the arbitrator's salary. And workers would be prevented from recouping attorney costs and other legal expenses, even in meritorious cases.

Combined, these provisions would effectively bar farmworkers from bringing any claims against their employers. The mediation and arbitration requirements would drastically increase transaction costs on extremely poor farmworkers who are seeking to enforce contract terms, labor rights, or provisions under the new H-2C program. The arbitration provision in particular—with its requirement that workers pay half the arbitration costs and their own legal fees—would price most farmworkers out of the justice system. Specifically, the provision would require an H-2C worker to pay a filing fee upwards of \$750 just to initiate a case. The worker would also be required to pay half of the arbitrator's hourly charges, which are generally in the range of \$200 to \$300 per hour. And all of these fees must be deposited in advance.

Most farmworkers would not be able to afford these up-front costs, and they would thus be forced to abandon their claims. Even if they could cover the arbitration costs, pursuing smaller value claims—even claims that are worth thousands of dollars—would not be economically feasible. For example, a worker who is underpaid \$100 by an employer would have to pay thousands of dollars

in unreimbursable costs just to attempt to collect the \$100 that is legally owed to the worker. The same would be true if the worker is underpaid \$1,000 or even \$5,000, as the possibility of winning such a claim is more than offset by the certainty of losing thousands of dollars in arbitration costs.

The mediation and arbitration provisions in H.R. 1733 would thus erode legal protections for all farmworkers. Employees would be unable to bring valid claims for unlawful harassment, discrimination, retaliation, unpaid wages, and violations of worker health and safety protections.

This would create a situation in which employers could essentially violate these protections with impunity. If workers are effectively prevented from pursuing otherwise-meritorious claims, there would be very little to prohibit employers from systematically underpaying or otherwise abusing their workers.

#### CONCLUSION

There is no doubt that our immigration system is broken, and nowhere is this more true than in the country's agricultural sector, but H.R. 1773 would only make the situation worse. The bill fails to address the reality of the over one million undocumented farmworkers living in the United States. Instead of providing these critical workers the ability to earn permanent immigration status through additional agricultural employment, H.R. 1773 creates a "report to deport" program that requires their departure from the country. This is an unrealistic solution that would further destabilize the agricultural workforce and shows little compassion for the hardworking families who toil to feed our Nation.

Additionally, H.R. 1773 creates a temporary worker program that resembles the now-infamous Bracero program. Rather than improve the poor and deteriorating conditions on America's farms, the bill would replace the existing H-2A temporary worker program with a new H-2C program that eliminates or weakens critical and longstanding protections for temporary farmworkers. This misguided legislation will consequently undermine the wages and working conditions of all farmworkers, and would lead to the displacement of U.S. workers currently engaged in farm work.

H.R. 1773 stands in stark contrast to the carefully-negotiated and balanced compromise reached by stakeholders throughout the agricultural industry. This hard-fought compromise would have allowed current undocumented farmworkers to earn permanent residency and eventual citizenship by engaging in 5 to 8 years of additional farm work. The compromise would also create a new temporary agricultural worker program that is streamlined and easy to use for employers but that also contains critical protections for both U.S. and temporary farmworkers. Taken together, the compromise would have benefitted both farmers and farmworkers, while securing the Nation's food supply.

Rather than engaging in piecemeal immigration legislation that would leave our immigration system even more broken than it is today, we urge our colleagues to follow the bipartisan approach taken in the Senate: a comprehensive immigration reform bill that creates a path to permanent residency for America's 11 million undocumented immigrants and that includes the agricultural compromise between farmers and farmworkers. We are a nation of im-

migrants, not a nation of guestworkers. The United States should move forward toward a brighter future, not regress to an exploitative past.

For all of these reasons, we respectfully dissent and urge our colleagues to reject this legislation.

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